

**REVISED PLANNING COMMISSION AGENDA**  
**CITY OF NEWPORT BEACH**  
**COUNCIL CHAMBERS - 3300 NEWPORT BOULEVARD**  
**Thursday, March 17, 2011**  
**Regular Meeting - 6:30 p.m.**

**EARL MCDANIEL**  
**Chairperson**

**ROBERT HAWKINS**  
  
**CHARLES UNSWORTH**  
  
**BARRY EATON**

**FRED AMERI**  
  
**MICHAEL TOERGE**  
  
**BRADLEY HILLGREN**

**Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:**

**JAMES CAMPBELL, Acting Planning Director**

**LEONIE MULVIHILL, Assistant City Attorney**

**PATRICK ALFORD, Planning Manager**

**TONY BRINE, City Traffic Engineer**

**GREGG RAMIREZ, Senior Planner**

**JAIME MURILLO, Associate Planner**

**MARLENE BURNS, Administrative Assistant**

**NOTICE TO THE PUBLIC**

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. Staff reports or other written documentation have been prepared for each item of business listed on the agenda. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Planning Department staff at (949) 644-3200. The agendas, minutes and staff reports are also available on the City's web site at: <http://www.newportbeachca.gov>.

This committee is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally either three (3) or five (5) minutes per person.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or [lbrown@newportbeachca.gov](mailto:lbrown@newportbeachca.gov)).

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues, which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

**APPEAL PERIOD:** Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

**NEWPORT BEACH PLANNING COMMISSION AGENDA**  
**Council Chambers – 3300 Newport Boulevard**  
**Thursday, March 17, 2011**  
**REGULAR MEETING**  
**6:30 p.m.**

- A. CALL TO ORDER**
- B. PLEDGE OF ALLEGIANCE**
- C. ROLL CALL**
- D. PUBLIC COMMENTS**

*Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to 3 minutes. Before speaking, please state your name for the record and print your name on the tablet provided at the podium.*

- E. REQUEST FOR CONTINUANCES**
- F. CONSENT ITEMS**

**ITEM NO. 1** Minutes of February 17, 2011

**ACTION:** Approve and file.

**ITEM NO. 2** Minutes of March 3, 2011

**ACTION:** Approve and file.

- G. PUBLIC HEARING ITEMS – None.**

**ALL TESTIMONY GIVEN BEFORE THE PLANNING COMMISSION IS RECORDED. SPEAKERS MUST LIMIT REMARKS TO THREE MINUTES ON ALL ITEMS.** (Red light signifies when three minutes are up; yellow light signifies that the speaker has one minute left for summation.) Please print only your name on the pad that is provided at the podium.

Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda will be made available for public inspection in the Planning Department located at 3300 Newport Boulevard, during normal business hours.

- H. NEW BUSINESS**

**ITEM NO. 3** Minimum Side Setback Determination (PA2011-013)  
Broadmoor Pacific View Planned Community

**SUMMARY:** Staff is seeking a determination from the Planning Commission regarding the Acting Deputy Director's decision on the application of side setbacks within the Broadmoor Pacific View Planned Community District.

**CEQA COMPLIANCE:** This action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably



foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**ACTION:** 1) Affirm the determination of the Acting Deputy Director on the application of side setbacks within the Broadmoor Pacific View Planned Community District.

**ITEM NO. 4** Zoning Code Implementation – Discussion Items

- Review Authority for Alcohol Sales
- In-Lieu Parking
- Planning Commission Appeals

**SUMMARY:** At the request of the Planning commission, this item has been placed on the agenda to give the Commission the opportunity to discuss the changes in the updated zoning code related to the alcohol sales and in-lieu parking fees.

**CEQA COMPLIANCE:** This action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

## **I. STAFF AND COMMISSIONER ITEMS**

**ITEM NO. 5** Planning Director's report.

**ITEM NO. 6** Planning Commission reports.

**ITEM NO. 7** Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

**ITEM NO. 8** Request for excused absences.

## **ADJOURNMENT**

**CITY OF NEWPORT BEACH**  
**Planning Commission Minutes**  
February 17, 2011  
Regular Meeting – 6:30 p.m.

**ROLL CALL:**

Commissioners Eaton, Unsworth, Hawkins, McDaniel, Toerge, and Ameri – present.

Commissioner Hillgren – excused.

**STAFF PRESENT:**

Patrick Alford, Planning Manager  
Leonie Mulvihill, Assistant City Attorney  
Jaime Murillo, Associate Planner  
Fern Nueno, Assistant Planner  
Marlene Burns, Administrative Assistant

**POSTING OF THE AGENDA:**

The Planning Commission Agenda was posted on February 4, 2011.

**PUBLIC COMMENTS:**

Commissioner Hawkins stated that on February 11, 2011, Speak Up Newport held the Mayor's Dinner, which was well attended. Mayor Michael Henn's speech was well received; it addressed the current and future state of the City.

\* \* \*

**REQUEST FOR CONTINUANCES:**

None

\* \* \*

**CONSENT ITEMS**

**SUBJECT: MINUTES** of the regular meeting of January 20, 2011.

**ITEM NO. 1**  
**Approved**

**Motion** made by Commissioner Hawkins and seconded by Commissioner Toerge to approve the minutes as corrected.

**Motion** carried with the following vote:

**Ayes:** Eaton, Unsworth, Hawkins, McDaniel, Ameri, and Toerge

**Noes:** None

**Excused:** Hillgren

\* \* \*

Chairperson McDaniel needed to recuse himself from Item No. 3, Netherton Residence (PA2011-016), so he proposed that Item No. 4, Discussion of Operator License Ordinance (PA2010-041), be heard before Item No. 3, Netherton Residence (PA2011-016). Item No. 2, Solar System Installations (PA2010-113) still to be heard first.

**Approved**

**Motion** made by Commissioner Hawkins and seconded by Commissioner Ameri to re-order the agenda as suggested.

**Motion** carried with the following vote:

**Ayes:** Eaton, Unsworth, Hawkins, McDaniel, Ameri, and Toerge

**Noes:** None

**Excused:** Hillgren

\* \* \*

### CONTINUED PUBLIC HEARING ITEMS

**SUBJECT:** Solar Energy System Installations - (PA2010-113)

**ITEM NO. 2**  
**PA2010-113**  
**Approved**

The project is a proposed code amendment, voluntary guidelines, and incentives applying to the installation of solar energy systems.

Fern Nueno, Assistant Planner gave a brief overview and added that there was some additional documentation and some public comments related to the project, which was received earlier in the day.

Chairperson McDaniel acknowledged receipt of the documentation; and noted that when the documentation is received ten minutes prior to the beginning of the meeting it is not possible for the Planning Commission to review the materials thoroughly.

The Planning Commission discussed the following issues:

- A regulation to be added in the ordinance requiring additional setback from the roadway and additional landscaping buffers, in addition to the solar energy permit requirement so as to mitigate glare issues.
- Drainage issue to be addressed by regulations in the Building Code requiring properties to manage the drainage off of their property to avoid nuisance and protect the quality of the storm drain system.
- A pitched roof versus a flat roof and the solar energy panel's height limitation. For a pitched roof the height limit is 24 feet and for a flat roof the height limit is that of 29 feet in order to promote solar panel installations around the City.
- Reduction in the height of the solar panel limit to be from five feet to three feet above the 24-foot flat-roof height limit.
- Commissioner Ameri proposed the Commission address the solar panel issue by looking at an overall regional solution.

City Attorney, Leonie Mulvihill, stressed the fact that aesthetics should not be taken into consideration as it is state law, and that only an impact on health and safety should be considered.

Public comment period was opened.

The residents of the surrounding neighborhood and general public expressed the following opinions:

John Petry – 1239 Bayside Drive

- Impacted by the Bayside Drive solar array.
- Expressed hope that the ordinance will help others.
- The City should lobby to revise state law.
- Health and safety aspects should address engineering.

Derek Spalding of the Orange County Chapter of the National Electrical Contractors Association – 180 South Anita Drive, Suite 103, Orange, California 92868

- The ordinance has a lot of positive features.
- Solar panels already have anti-reflective coatings.
- After market anti-reflective coatings could void manufacturer's warranties.

Matt Stoutenburg – 15052 Red Hill Avenue

- Suggestion that the design of the system should fit the house, the example at Bayside Drive is irresponsible.
- Size from manufacturer of the solar panels and the tilt of the solar panels is always changing. So one should look at the restrictions on a case-by-case as each building has different characteristics, including if the building is commercial or residential.
- Height above roof 5 feet versus 3 feet cannot be a rule because of different building characteristics.
- If something causes glare, it does not mean that glare will be there year long.

Public comment period was closed.

**Motion:** made by Commissioner Toerge and seconded by Commissioner Hawkins to adopt a resolution recommending the City Council approval of the Code Amendment No. CA2011 -001 and voluntary guidelines with incentives *with the following modifications:*

- Modify the Resolution Finding No. 9 by having the word "prevent" be replaced by the word "reduce" and should read as follows, *"Screening of equipment other than solar collectors will reduce any negative noise impacts and dangers from exposed electrical equipment."*
- Modify the Draft Regulations 20.30.140.A.2.a, by changing the height to be from five feet to be three feet and read as follows, ***"Roof-mounted. Roof-mounted solar collectors may project up to twelve inches above a roof plane with a minimum 3/12 pitch, but may not project vertically above the peak of the sloped roof to which it is attached. Roof-mounted panels may project up to three feet above a flat roof plane, notwithstanding the maximum height limit for the Zoning District in which the property is located."***

- Modify the resolution by adding the following under Section 3 as follows:

*"The Planning Commission hereby further recommends that staff further study the need for anti-glare coatings and their potential impacts to the efficiency of solar energy systems and make appropriate recommendations to the City Council."*

*The Planning Commission hereby further recommends that staff further study limiting the size of solar energy systems based on the amount of power generated to only the energy needs of the property and make appropriate recommendations to the City Council."*

*The Planning Commission hereby further recommends that the City Council, either individually, or in cooperation with other jurisdictions, inform the State Legislature of the unintended consequences of the Solar Rights Act and recommend appropriate amendments."*

*The Planning Commission hereby further recommends that the City Council regionalize the issue by encouraging the consolidation of solar energy systems."*

Commissioner Hawkins proposed that the City lobby and negotiate with other cities to challenge if necessary, and indeed look at regional solutions.

Commissioner Toerge, maker of the motion, agreed to the proposed, Commissioner Hawkins seconded the motion.

**Motion** carries with the following vote:

**Ayes:** Eaton, Unsworth, Hawkins, McDaniel, Ameri, and Toerge  
**Noes:** None  
**Excused:** Hillgren

\* \* \*

### NEW BUSINESS

**SUBJECT:** Discussion of Operator License Ordinance (PA2010-041)

**ITEM NO. 4**  
**PA2010-041**

On January 25, 2011, the City Council adopted Ordinance No. 2011-002 amending the Municipal Code to incorporate a new chapter (Chapter 5.25) that will require operators of certain establishments that offer alcoholic beverages for on-site consumption in combination with late hours, entertainment, and/or dance to obtain an Operator License. The intent of this agenda item is to provide the Planning Commission with an overview of the Ordinance and answer any questions the Commission may have.

Jaime Murillo, Associate Planner, gave a brief overview of the Operator License ordinance and presented a PowerPoint presentation.

The Planning Commission discussed the following issues:

- There was some concern that one individual would have additional obligations and may determine the fate of each case differently, whereas some conditions may be harsher on some businesses and may be more lenient on other businesses. However, redress is available for discrimination and the City Attorney's Office is a resource available to advise the decision-makers in those cases.
- The Planning Commission did not foresee that the process would be directed to the Police Department administer the Operator License program, resulting in no discretion of elected or appointed officials for public oversight.

The report was received and filed.

\* \* \*

### PUBLIC HEARING ITEMS

**SUBJECT:** Netherton Residence - (PA2011-016)

**ITEM NO. 3**  
**PA2011-016**  
**Approved**

The application is for a variance to allow a wall, up to 6 feet 8 inches in height, to be constructed within the 10-foot "streetside" side setback where the maximum height for walls, fences and hedges is limited to three (3) feet.

Chairperson McDaniel recused himself, due to a real property conflict of interest at approximately 9:07 p.m. and left Vice Chairperson Unsworth to continue with the meeting.

Patrick Alford, Planning Manager, gave a brief overview and provided a

PowerPoint presentation.

Vice Chairperson Unsworth, noted that on the first page of the Resolution, Item No. 2, "6 feet 8-inches" should be replaced with "5-foot 2-inches" as the City measures the height differently than the Homeowner's Association measures the height.

Commissioner Eaton asked for clarification regarding the location of where the street light would be moved to.

Public comment period was opened.

The Applicant, Larry Netherton, addressed the street light question by stating that it arose out of a need to mitigate the parking and circulation concern at the cul-de-sac. Proposed to go at the far corner of the Netherton's property, as approved by the Homeowner's Association.

Commissioner Ameri left the meeting at approximately 9:09 p.m.

Public comment period was closed.

**Motion:** made by Commissioner Toerge and seconded by Commissioner Hawkins to adopt a resolution approving Variance VA2011-003.

**Motion** carries with the following vote:

**Ayes:** Eaton, Unsworth, Hawkins, and Toerge  
**Noes:** None  
**Excused:** Hillgren  
**Absent:** Ameri  
**Recused:** McDaniel

\* \* \*

### STAFF AND COMMISSIONER ITEMS

Planning Director's report:

**ITEM NO. 5**

Planning Manager, Patrick Alford, stated that the City Council met on February 8, 2011. The Council received the first quarterly progress report, including Banning Ranch and the project proposed in the 600 Block of Newport Center Drive.

Planning Commission reports:

**ITEM NO. 6**

Commission Hawkins, stated that due to staffing reductions, the Economic Development Committee did not meet this month. The Business License Sub-Committee did meet this month and may be continuing its work. A report from the City Manager's office was received that proposed to eliminate the Economic Development Committee in addition to EQAC.

Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

**ITEM NO. 7**

Commission Hawkins requested to have the in lieu parking brought to the Commission.

Requests for excused absences – Commissioner Toerge requested to be absent on March 3, 2011.

**ITEM NO. 8**

**ADJOURNMENT:** 9:22 p.m.

MICHAEL TOERGE, SECRETARY

CITY OF NEWPORT BEACH PLANNING COMMISSION

**CITY OF NEWPORT BEACH**  
**Planning Commission Minutes**  
March 3, 2011  
Regular Meeting – 6:30 p.m.

**ROLL CALL:**

Commissioners Eaton, Unsworth, Hawkins, McDaniel, and Hillgren – present.  
Commissioners Toerge and Ameri – excused.

**STAFF PRESENT:**

James Campbell, Acting Planning Director  
Patrick Alford, Planning Manager  
Leonie Mulvihill, Assistant City Attorney  
Tony Brine, City Traffic Engineer  
Kay Sims, Assistant Planner  
Jaime Murillo, Associate Planner  
Melinda Whelan, Assistant Planner  
Makana Nova, Assistant Planner  
Marlene Burns, Administrative Assistant

**POSTING OF THE AGENDA:**

The Planning Commission Agenda was posted on February 25, 2011.

**PUBLIC COMMENTS:**

None

**REQUEST FOR CONTINUANCES:**

None

\* \* \*

**CONSENT ITEMS**

**SUBJECT: MINUTES** of the regular meeting of February 17, 2011.

**ITEM NO. 1**

**Motion** made by Commissioner Hawkins and seconded by Commissioner Unsworth to continue the approval of the minutes.

**Approved**

**Motion** carried with the following vote:

**Ayes:** Eaton, Unsworth, Hawkins, McDaniel, and Hillgren

**Noes:** None

**Excused:** Ameri and Toerge

\* \* \*

Chairperson McDaniel proposed that Item No. 2, General Plan Annual Progress Report (PA2007-195) be moved to be heard last.

**Motion** made by Commissioner Hawkins and seconded by Commissioner Unsworth to reorder the agenda as requested.

**Motion** carried with the following vote:

**Ayes:** Eaton, Unsworth, Hawkins, McDaniel, and Hillgren

**Noes:** None

**Excused:** Ameri and Toerge

\* \* \*

**PUBLIC HEARING ITEMS**

**SUBJECT:** Jamboree Chevron – (PA2008-165)  
1550 Jamboree Road

**ITEM NO. 3**  
**PA2008-165**  
**Approved**

The application consists of a conditional use permit to allow the following design and operation changes to an existing service station: demolition of three, unused service bays to increase the floor area of the existing convenience market; introduction of off-site beer and wine sales (Type 20); the addition of an automated car wash; removal of an existing office/storage building and trash enclosure; construction of a new trash enclosure; the addition of landscaping areas; and related interior and exterior improvements. The application also includes a modification or waiver of the landscaping standards of the Zoning Code to allow fewer trees and shrubs than required.

Kay Sims, Assistant Planner, gave a brief overview of the staff report with a PowerPoint presentation.

After discussion, the Commission identified and presented some questions that were resolved as follows:

- The landscaping plans are subject to review before the approval of the building permit.
- It is unknown if the Chevron service station had been owned by the Irvine Company.
- The location of the carwash and new office was agreeable.
- Alcohol sales are to be handled only by employees that were to be properly completed training requirements and be at least 21 years of age.

The Applicant, Architect Steve Dahlberg, needed clarification of Item No. 14 in the Conditions of Approval, initially requiring that all owners, managers and employees were required to undergo the training program for selling alcoholic beverages. The Commissioners agreed that the condition should only be applied employees at the 1550 Jamboree Road Chevron location.

The Commission asked some questions of the Applicant and were resolved as follows:

- The Irvine Company has accepted the design concept, the next step will be to have them review the working drawings to confirm the design concept and once that has been completed; it will result in their acceptance of the project.
- New handicapped walkway from Jamboree up to the building is necessary because the pedestrians and the Americans with Disabilities Act (ADA) has a grade that is required for the slope and is to be separated from the automotive traffic.

Public comment period was opened.

Comments were given by the following resident from the surrounding neighborhood:

Joyce Fay Barnes – 122 E. Bay Avenue

- Concerned with the alcohol sales and alcohol consumption at the Chevron Station.

Public comment period was closed.

**Motion** made by Commissioner Hawkins and seconded by Commissioner Unsworth, to adopt a resolution approving Use Permit No. UP2008-051 with the following modifications:



- Condition of Approval to be added and read as follows  
*"The final landscaping plan shall be subject to review and approval by the Planning Division prior to issuance of a building permit."*
- Modify Condition of Approval No. 14 by deleting the word owners and read as follows: *"All, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach."*

**Motion** carried with the following vote:

**Ayes:** Eaton, Unsworth, Hawkins, McDaniel, and Hillgren

**Noes:** None

**Excused:** Ameri and Toerge

\* \* \*

**SUBJECT:** Crow Burger Kitchen Appeal – (PA2010-155)  
3107 Newport Boulevard

**ITEM NO. 4**  
**PA2010-155**  
**Approved**

An appeal of the Zoning Administrator's approval of Minor Use Permit No. UP2010-036 allowing an eating and drinking establishment (food service with no late hours) with a covered patio and a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control (ABC) license.

Makana Nova, Assistant Planner, gave a brief overview of the staff report with a PowerPoint presentation and mentioned the following:

- This was a de novo hearing as a result of the appeal.
- It is the Planning Division's practice that when a new entitlement application is submitted, it is processed under the current code.

Commissioner Unsworth and Commissioner Hawkins filed an appeal and discussed the following issues:

- Under the prior Zoning Code, conditions imposed on the Landing required that any restaurant serving alcoholic beverages come back before the Planning Commission for a use permit.
- Questioning whether or not there should be outdoor service of alcoholic beverages and a gate from the patio to the public walkway.
- A 36 inch railing was an issue due to young adults going to the nearby grocery store coming from the beach and has the potential for making alcoholic beverages readily available as they may interact with patrons of the establishment.
- Open doors were an issue because of the added noise, and should only open when patrons go in and out.
- The potted trees and location of a bench area on the Landing property.

The Applicant, Steve Geary, addressed the questions from the Commissioners and the questions were resolved as follows:

- The gate from the patio will be locked and only be used as a fire exit.
- The doors will be pocket doors and the opening will be just a few feet.
- Outside alcohol service, limited to beer and wine, is important to the overall feel of the restaurant.

Craig Oka of Architects Design Consortium, Architect for the project clarified the following:

- A sliding glass door would allow egress and ingress to and from the patio.
- Elimination of the gate if allowed by the Building and Fire Department
- Planters to be moved closer to the railings.
- Awning would mitigate noise on the patio.
- Agreeable to height of the patio wall of 60 inches rather than 36 inches.

Public comment period was opened.

Comments were given by the following persons:

Sean Whiskeman - Catellus Development Group

- Spoke regarding the opening of the shopping center.

Richard Luehrs – President of the Newport Beach Chamber of Commerce

- In support of outdoor dining facility, stated that crime statistics lowest in 40 years.

George Schroeder – 129 35<sup>th</sup>

Joyce Fay Barnes – 122 E. Bay Avenue

Joe Reiss – 30<sup>th</sup> Street

Richard Meyer – 1623 West Balboa

David S. – Seashore Drive

- Concerns of alcohol consumption by minors due to a small height of wall.
- Too many restaurants serving alcohol in the area.
- Patio area of concern with the noise from the restaurant, even after patrons leave.
- Alcohol related issues need to be kept in perspective.

Public comment period was closed.

Commissioner Hillgren was in support of the project as it had been consistent with the approvals given to others at the center. The location, not being on the corner or on the street was not an issue and therefore discouraged the outdoor barrier since the operator would not risk losing the alcohol license, and aesthetics would be compromised. In addition, he mentioned that the rest of the uses in the center are subject to the conditional use review as approved in the Development Agreement for the project.

City Attorney Leonie Mulvihill stated that all applications are processed under the current Zoning Code. Commissioner Hawkins disagreed in that he stated that the Landing use permit was processed under the old Zoning Code. Even when applying the new Zoning Code the use permit for the Landing did not include specification of the minor or conditional use permit and added that it could still be presented to the Planning Commission.

**Motion** made by Commissioner Hillgren and seconded by Commissioner Hawkins, to adopt a resolution denying the appeal and upholding and affirming the decision of the Zoning Administrator to approve Minor Use Permit No. UP2010-036, subject to the

findings and conditions of approval included within the draft resolution with the following modifications:

Public comment period was re-opened.

Detective Bryan Moore addressed the following concerns:

- Patio barrier – Could not speak as to what the impact of the noise would be. Passing of alcohol to minors was not an issue as the area would be conditioned appropriately.
- Beer and wine – People may become intoxicated but did not believe that it would be of concern.
- Patio hours – Did not foresee an issue as the patio would close at 10:00 p.m., mitigating some noise.

Public comment period was closed.

Commissioner Hawkins mentioned that the issue related to the outdoor patio had been addressed by Detective Moore.

A substitute motion was proposed by Commissioner Hawkins that the appeal be affirmed as to the issue of the jurisdiction of the Zoning Administrator in the minor use permit.

The maker of the motion declined the proposed substitute motion as the text did not need to appear in the motion; the substitute motion was subsequently withdrawn by the maker of the substitute motion.

Chairperson McDaniel would have liked a higher wall; but found no issue as the beer and wine alcohol service on the patio issue had been resolved.

Commissioner Unsworth noted that the land-use was at issue for approval and mentioned that the problem with inebriated minors could be mitigated if there were a demising wall along with the outdoor alcohol service.

Commissioner Eaton noted his issue with the outdoor alcohol service on the patio, and would prefer that there be no alcohol service on the patio. He added that there was enough indoor seating to accommodate the alcohol service, exclusively indoors.

**Substitute Motion** by Commissioner Hawkins and seconded by Commissioner Eaton, to approve as presented with the prohibition of alcohol service on the outdoor patio.

Maker of the motion, Commissioner Hillgren, added to the substitute motion that the outdoor patio alcohol service conclude at 8:00 p.m., and the maker of the substitute motion, Commissioner Hawkins, and the second maker of the substitute motion, Commissioner Eaton, agreed.

**Motion** carried with the following vote:

**Ayes:** Eaton, Unsworth, McDaniel, and Hillgren

**Noes:** Hawkins

**Excused:** Ameri and Toerge

**SUBJECT:** Malarky's Irish Pub – (PA2010-172)  
3011 Newport Boulevard

**ITEM NO. 5**  
**PA2010-172**  
**Approved**

The application consists of a conditional use permit request to expand an existing eating and drinking establishment and to allow for the use of off-site parking. The application also includes a request for a comprehensive sign program to allow more than three signs on a single-tenant building.

Jaime Murillo, Associate Planner, gave a brief overview of the staff report and mentioned the following:

Staff was originally in support of the proposed project, including the expansion of the interior dining area. Staff believed that the Operator License would provide the Police Department with an effective tool to regulate the late hour operations; however, after receiving additional information from the Police Department, staff reconsidered the recommendation and recommended that the Planning Commission deny the interior dining room expansion and only approve the other dining area. Even with the requirement to secure an Operator License, negative impacts resulting from the large influx of patrons leaving the establishment and adjacent establishments cannot be prevented as they are outside the control of the Operator and on-site operations. Some of the negative impacts cited were as follows:

- Taxi cabs and cars blocking circulation upon closing.
- Jay walking as a result of patrons exiting the restaurant.
- Patrons loitering in the surrounding neighborhood and congregating in the late hours.

The Planning Commission discussed the following issues:

- Sprinkler requirements.
- Interior re-model without adding floor area.
- Hours of alcohol service.
- Indoor occupancy capacity of 166 versus 150 or less.
- Availability of limited food menu for patrons of the late night hours.

Applicant, Mario Marovic, gave a power point presentation and presented letters in support of Malarky's to the Commissioners. The following was discussed:

- Exterior and interior improvements to the building.
- Security is certified and on-site until 3:00 a.m.
- Would like the bathroom to be Americans with Disabilities Act (ADA) compliant.
- Fixed dining to attract sophisticated clientele.

Comments in support were provided by the following persons:

William R. (Bill) Hamilton – 3625 5<sup>th</sup> Avenue, Corona del Mar

Vincent Barbato – 4203 Seashore Drive, Newport Beach

Caren Lancona – 1900 West Oceanfront

John Baren

Doug Thomas – resident and former Newport Beach Vice and Intelligence employee.

Frank Kosi – 2824 Newport Boulevard

Frank Fasel – 208 ½ 29<sup>th</sup> Street

Cindy Farney – 1732 Orchard Drive

Boyd Mickley – 1732 Orchard Drive

Gregory Ozimec – 315 Canal Street

Leon Ellensperger – 3401 Finley Avenue

President Chambers of Commerce

Brett Del Valle – 1201 Estelle Lane

Gordon Barienbrock – 3000 W. Oceanfront

Brian Harrington – 930 W. Balboa Boulevard

Brenda Martin – 206 30<sup>th</sup>

Brent Ranek – 246 Lugonia Street  
Andy Falhetthi – 616 Seaward Road

A summary of comments in support were as follows:

- Higher quality of dining that would be afforded and attract an upscale crowd.
- Great new venue for events if re-modeled.
- Malarky's adding great value to the community.
- Upscale atmosphere would be an improvement; Police Department should have better response in getting problems addressed appropriately.

Greg Tonkovich – Applicant's Noise Consultant, 1021 Didrickson Way, Laguna Beach

- Presented his noise study and concluded that outdoor patio would not be an issue nor have an impact on the neighbors.

Comments in opposition were provided by the following persons:

Joyce Faye Barnes – 122 East Bay Avenue  
Van Elliot – 3417 Marcus Avenue  
George Schroeder – 129 35th  
Drew Wetherholt – Submitted photos of police calls of service, hit and runs.  
Cynthia Koller – West Newport  
Joe Reiss – 30<sup>th</sup> Street  
Ryan Clemett – 1604 Schaffer Street  
Mogan Dodgers – 207 30<sup>th</sup> Street  
Kathy Reiss – 30<sup>th</sup> Street

A summary of comments in opposition were as follows:

- There is an overconcentration of drinking establishments.
- There is one alcohol license per every thirty-eight residents in District 15, which has the highest crime rate in the City.
- There are fights and other objectionable behavior.
- Concerned with people being intoxicated and as a result being a nuisance in surrounding neighborhoods.

Applicant responded to photos stating that the incident with the hit and run was not a patron of Malarky's.

An additional general discussion ensued.

**Motion** made by Commissioner Hillgren and seconded by Commissioner Hawkins, to adopt a resolution approving Use Permit No. UP2010-039 and Comprehensive Sign Program with the addition of the following conditions to the resolution:

- *To limit the late-hour disturbances that the expanded dining area may create through increased occupancy, the occupancy load of the interior of the establishment has been limited to a maximum of 150 persons between the hours of 11:00 p.m. and 2:00 p.m.*
- *The operation of the establishment shall be reviewed by the Planning Commission one year from the date the certificate of occupancy is issued for the interior expansion to ensure the increased occupancy has not resulted in detrimental impacts. The Deputy Community Development Director may initiate a review earlier than one year if detrimental impacts are identified.*
- *Upon vesting of the rights authorized by this Conditional Use Permit No.*

*UP2010-039, all previous rights authorized under Use Permit No. 1792 shall terminate. The following conditions of approval shall supersede the conditions of approval included in Use Permit No. 1792 and Use Permit No. 1792 (amended).*

**Motion** carried with the following vote:

**Ayes:** McDaniel and Hillgren  
**Noes:** Eaton, Unsworth, and Hawkins  
**Excused:** Ameri and Toerge

**Motion** made by Commissioner Eaton and seconded by Commissioner Hawkins, to approve the revised resolution denying the interior expansion and only approving the Conditional Use Permit for the outdoor dining patio and the Comprehensive Sign Program.

**Motion** carried with the following vote:

**Ayes:** Unsworth  
**Noes:** Eaton, Hawkins, McDaniel, and Hillgren  
**Excused:** Ameri and Toerge

A general discussion ensued to cap the occupancy during the late hour operations to be 120 occupants, based on the finding that it was less than one third than was initially proposed and the reduced number of occupants would be more manageable for the Police Department.

**Motion** made by Commissioner Eaton and seconded by Commissioner Hawkins, to adopt a resolution approving Use Permit No. UP2010-039 and Comprehensive Sign Program with the addition of the following conditions to the resolution:

- *The operation of the establishment shall be reviewed by the Planning Commission one year from the date the certificate of occupancy is issued for the interior expansion to ensure the increased occupancy has not resulted in detrimental impacts. The Deputy Community Development Director may initiate a review earlier than one year if detrimental impacts are identified.*
- *The interior occupant load of the establishment shall be limited to a maximum of 120 persons during the late-hour operations between the hours of 11:00 p.m. and 2:00 a.m.*
- *Upon vesting of the rights authorized by this Conditional Use Permit No. UP2010-039, all previous rights authorized under Use Permit No. 1792 shall terminate. The following conditions of approval shall supersede the conditions of approval included in Use Permit No. 1792 and Use Permit No. 1792 (amended).*

**Motion** carried with the following vote:

**Ayes:** Eaton, Unsworth, McDaniel, and Hillgren  
**Noes:** Hawkins  
**Excused:** Ameri and Toerge

**Motion** made by Commissioner Unsworth and seconded by Commissioner Hawkins, to continue meeting.

**Motion** carried with the following vote:

**Ayes:** Eaton, Unsworth, Hawkins, McDaniel, and Hillgren  
**Noes:** None  
**Excused:** Ameri and Toerge

**SUBJECT:** General Plan Annual Progress Report – (PA2007-195)

**ITEM NO. 2**  
**PA2007-195**

The application consists of a conditional use permit request to expand an existing eating and drinking establishment and to allow for the use of off-site parking. The application also includes a request for a comprehensive sign program to allow more than three signs on a single-tenant building.

Melinda Whelan, Associate Planner, gave a brief overview of the staff report.

The Planning Commission discussed the following:

- Koll and Conexant project was placed on hold.
- Affordability had expired on some units; the lost units are not added to the requirement.
- Addition of Implementation Plan for the Local Coastal Plan to be certified is forthcoming.

The report was received and filed.

\* \* \*

**ADJOURNMENT:** 12:06 a.m.  
MICHAEL TOERGE, SECRETARY  
CITY OF NEWPORT BEACH PLANNING COMMISSION

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

March 17, 2011

Agenda Item 3

**SUBJECT:** Minimum Side Setback Determination - (PA2011-013)  
Broadmoor Pacific View Planned Community

**PLANNER:** Jaime Murillo, Associate Planner  
(949) 644-3209, [jmurillo@newportbeachca.gov](mailto:jmurillo@newportbeachca.gov)

---

**SUMMARY**

Jamie and Patricia White, homeowners residing within the Broadmoor Pacific View community, have raised a concern with regard to staff's implementation of the side setback regulations of the Broadmoor Pacific View Planned Community text (PC text). Staff is seeking a determination from the Planning Commission regarding the appropriate application of side setbacks within the Broadmoor Pacific View Planned Community District.

This report outlines the setback regulations of the PC text, summarizes the Whites' concern and interpretation, provides an analysis of their interpretation, and provides a recommendation to resolve the ambiguity in the regulations.

**RECOMMENDATION**

Make a determination that the Broadmoor Pacific View Planned Community text is silent on the application of side setbacks in non-zero lot line configurations, and therefore, to provide equity and certainty with regard to development limits, a minimum side setback of 5 feet should be provided.

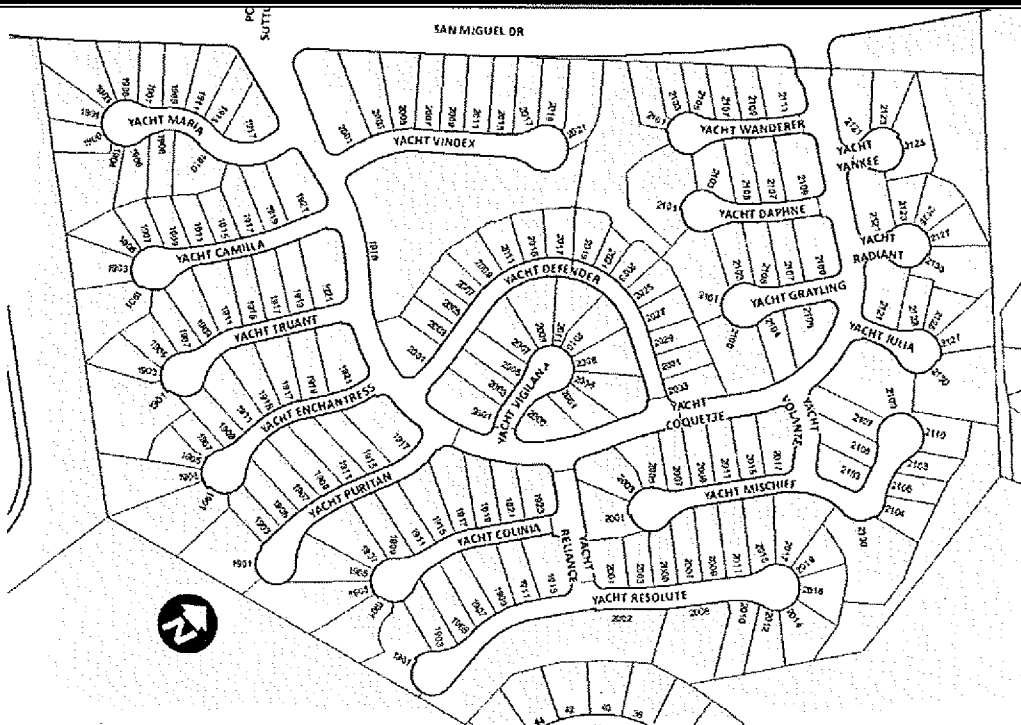
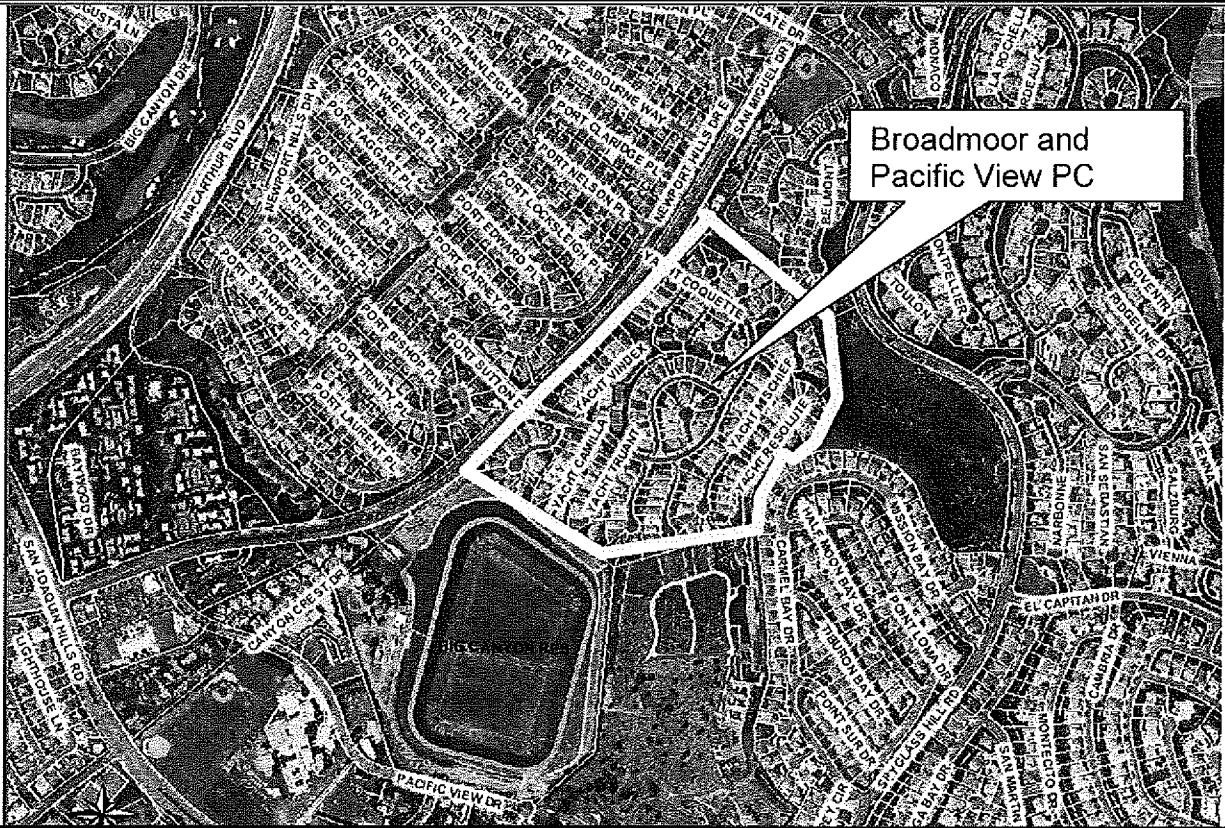
**INTRODUCTION**

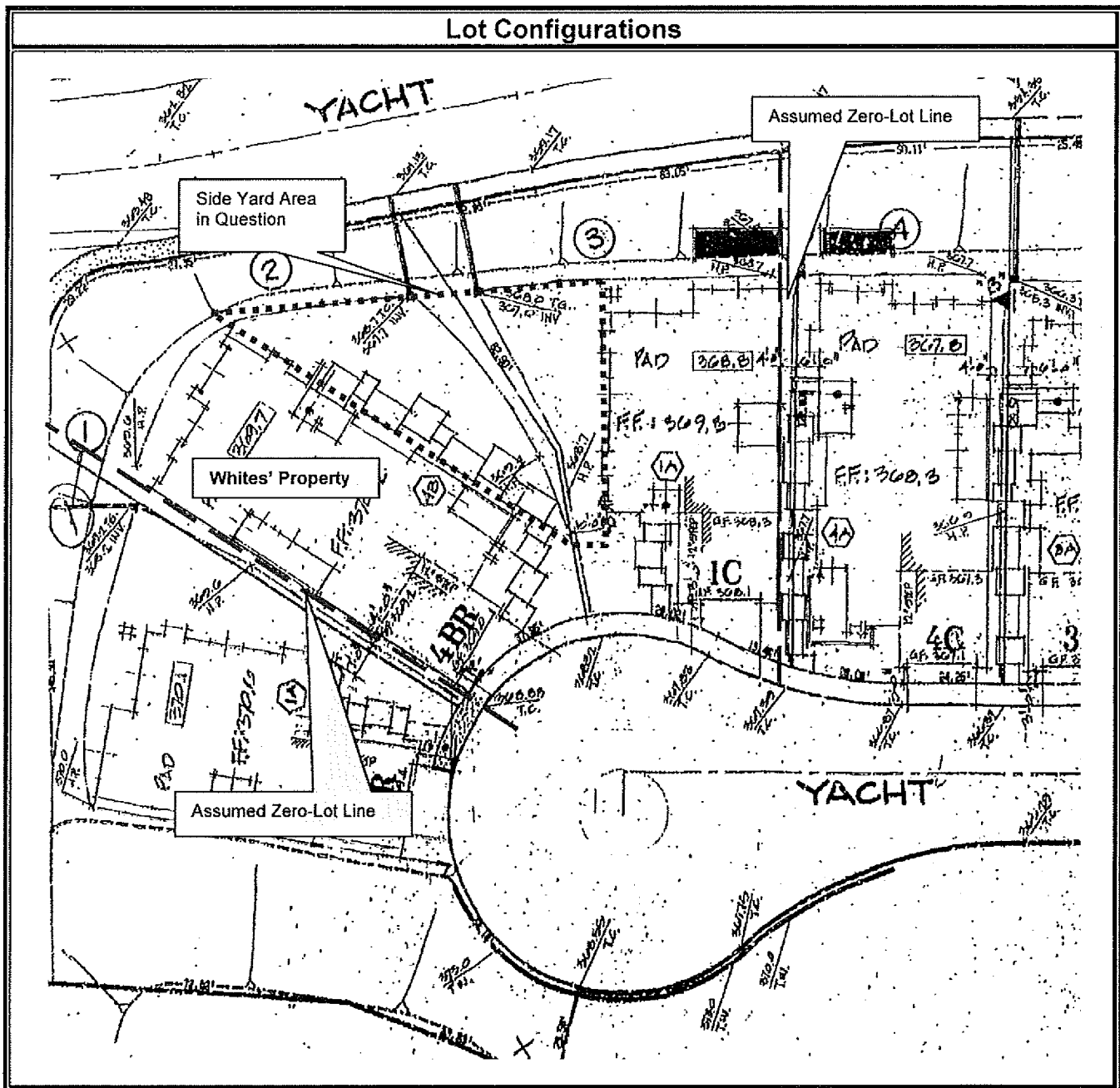
**Community Setting**

The Broadmoor Pacific View community is located on the southeasterly side of San Miguel Road, adjacent to the Big Canyon Reservoir, and consists of 167 detached, single-unit dwellings. The development is a gated community that was developed in the late 1970's and was designed with terraced lots to provide a maximum number of view lots.



### VICINITY MAP





and recreational uses within the community. A copy of the Planned Community text is attached as Attachment No. PC1.

The PC text development regulations are unique in the following two aspects pertaining to setbacks:

1. Front and Rear Yards. Instead of establishing traditional front and rear yard setbacks, the PC text establishes "street setbacks" and "view setbacks".
  - a. For street setbacks, the PC text establishes a default 5-foot minimum setback from the curb line of local access streets and a 10-foot minimum setback along the collector street; however, the PC text also refers to a setback map/plan that establishes specific street setbacks for each of the lots. Generally, the street setbacks are staggered and are 5 feet, 10 feet, 18 feet, or 20 feet for the main structure. The PC text also includes a provision for garages to encroach to within 3 feet of the back of sidewalk or be setback a minimum of 20 feet.
  - b. For view (rear) setbacks, the PC text requires structures to be setback a minimum of 3 feet from the top of slope. For non-view lots, the setback is considered a traditional rear setback and a minimum 10-foot setback is required, which is measured from the toe of slopes. As in the case of street setbacks, the PC text also refers to a setback map/plan that establishes the specific view setbacks for each of the lots.
2. Side Setbacks. The PC text permits a zero-side setback on one side of a property, provided there are no openings in that building wall and that a minimum of 10 feet is provided between houses. In researching the subdivision files, it is evident that the original intent was to design the community with zero-side setbacks on one side, allowing offsetting of the houses on each individual lot in order to provide a larger, more usable side yard; however, when the community was actually constructed, zero-side setbacks were not implemented. Staff believes the explanation from deviating from the zero-side setback configuration may relate to Building Code concerns pertaining to openings and egress requirements. In most cases, the developer designed the homes in a manner that provides a minimum 4-foot setback on one side of the property line and a minimum 6-foot setback on the other side. Two lots side-by-side would comply with minimum required separation of 10 feet between houses. In order to implement the zero-side setback concept, the use of easements was established giving use of the 4-foot side area to the adjacent property for landscaping. For the purposes of this discussion, this configuration is referred to as the "assumed zero-lot line configuration". In some cases, lots located near the end of cul-de-sacs were not provided with landscaping easements because larger side setbacks were provided.

Purpose of this Discussion - 2003 & 2005 Yacht Mischief

Jamie and Patricia White, homeowners residing at 2003 Yacht Mischief, raised a concern with regard to the side setback regulation of the PC text. The White's property is located near the end of a cul-de-sac and because of the large side setback between their property and their neighbor to the east (2005 Yacht Mischief), they do not benefit from the CC&R's side landscaping easement provision. Their neighbor is planning on an addition to the house that would be setback 5 feet from their shared property line and would provide for a separation between houses that exceeds the minimum 10-foot separation requirement. The Whites' primary concern is that the addition proposed will block their northern view of the hills.

The Whites contend that the permitted site plan used for the initial construction of the homes in the community actually controls the allowable building envelopes for each of the lots within the community, including side setbacks. The Whites assert that the "final setback map" (Section IV.D. Setbacks from Streets) and the "approved site plans" (Section IV.E. Setbacks from Property Lines: Rear or Front) as referred to by the PC text are the permitted site plans used for construction and not the "Setback Map" staff historically and currently utilizes. Under the Whites interpretation, no additions beyond the original building envelope would be allowed. The Whites have submitted a letter with exhibits (Attachment No. PC2) in support of their interpretation.

**DISCUSSION**

Staff believes there are two questions that need to be resolved:

- 1) What site plan or map is the correct exhibit to reference when determining the street and view setbacks for homes in the Broadmoor Pacific View Planned Community?
- 2) How should side setbacks be regulated given that zero-side setbacks do not exist within the community?

Question No. 1- Street and View Setbacks

When the City was processing the PC text and tentative tract map for the community in 1975, a "Setback Map" (Attachment No. PC3) was prepared to establish the street and view setbacks. The Setback Map was included as an attachment to the 1975 Planning Commission staff report. The Setback Map has historically been used by staff to establish the minimum street and view setbacks (Front and Rear respectively) for residential development in the community. The setbacks listed on the map have also been added to the City's former Districting Maps (Attachment No. PC4) used to establish front setbacks throughout the City, affirming that the setbacks illustrated on the "Setback Map" are the correct setbacks to be used. Although staff has historically used the "Setback Map" as the official document for the purposes of establishing the

minimum street and view setbacks, staff's review of the issue has identified the following ambiguities:

- The PC text utilizes inconsistent terms when referring to the "Setback Map". Within Section IV.D. (Setbacks from Streets) the PC text refers to a "final setback map" and within Section IV.E. (Setbacks from Property Lines: Rear or Front), the PC refers to the "approved site plans".
- The "Setback Map" is based on the tentative tract map for the community and does not reflect the final lot configurations as recorded on the final tract maps. The Whites claim that the "Setback Map" is not the plan referred to in the PC Text because it does not accurately reflect the final lot configurations; however, staff's comparison of the tentative tract map and final tract maps revealed that all of the lots are substantially similar to their final configurations with the exception of only one lot that was moved from the end of one cul-de-sac to another. Also, the former Districting Map did not list a street setback for this one relocated lot.
- Within Section IV.D. (Setbacks from Streets), the PC text states that "Prior to the issuance of building permits for each phase of a project, a final setback map shall be submitted to the Community Development Director indicating the setbacks to all building areas proposed in the development". Staff performed an extensive search of all historic documents and entitlements pertaining to the approval of this community in an attempt to locate a "final setback map", and was unable to locate such a document for the entire community. An exhibit titled "Final Setback Map for Tract 9260 (Model Area)" was located within the file and illustrates garage and house setbacks from the street property line and view side setbacks along the rear. The setbacks illustrated are more restrictive than those shown on the Setback Map and appear to match the actual setbacks as developed. To reiterate, no such final setback map exists for the rest of the community.

#### Question No. 2- Side Setback Requirement

Another concern raised by the Whites is with regard to staff's determination on the application of the side setback regulation. Section IV.E (Side Yard) of the PC text regulates side setbacks as follows:

*A zero side yard setback between the structure and the lot line shall be permitted on one side provided there are no openings on the zero side yard wall and that a total of ten (10) feet shall be provided between structures.*

The PC text is silent on what the minimum side setback should be in instances where a zero-side is not proposed. The PC text is unclear as to whether or not the minimum 10-foot separation requirement only applies in a zero-side circumstance, or if the 10-foot

separation is a stand alone requirement. This question becomes even more important when abutting lots have an assumed zero-lot line configuration on opposite sides of a common lot line (see exhibit on Page 3). In the absence of any other language within the PC text regarding the regulation of side setbacks, the Acting Deputy Director made the determination that no side setback is required from a property line, provided there is least 10 feet between houses and that there is only one zero side setback. This determination is consistent with how staff has historically reviewed development plans for remodels and additions in the past.

The existing development pattern of the community reveals that most of the houses maintain minimum side setbacks of 4 feet to the side property line and a minimum of 10 feet between structures. In 17 instances (affecting 34 lots), however, a modification permit (Modification Permit No. 1055 –Exhibit No. 14 of Attachment No. PC2) was approved allowing a building separation of only 8 feet. The modification permit clearly states that the development standard being modified is the 10-foot separation requirement of the PC text. This modification permit, approved in 1976, confirms that the City has historically interpreted that this provision of the PC text to mean that no side setback is required, provided a minimum of 10 feet is provided between houses.

As previously discussed, the Whites believe that the approved site plans (Exhibits 1, 2, 3 of Attachment No. PC2) used for construction of the homes is the “final setback map” referred in to in Section IV.D. (Setbacks from Streets), and therefore, the plans control the building envelopes for each of the lots within the community, including the side yard setbacks as dimensioned. Staff disagrees with this interpretation for the following reasons:

- Section IV.D (Setbacks from Streets), is intended to regulate setbacks from streets only. The only instances in which this section should apply to a side setback is when a side yard of a corner lot is adjacent to a street, in which case the minimum street setbacks would be required.
- The approved site plans used for construction of the homes only illustrates garage setbacks and side setbacks between structures. The plans do not include any street setbacks to the actual residential buildings or dimension any of the view setbacks from top of slope or to rear property line, therefore, they can not be used for the purposes of establishing street or view setbacks as specifically referenced by the PC text.
- If the approved site plans control the building envelope for all the houses in the community, then no additions beyond the original building envelope would ever be allowed. Historically, the Homeowner’s Association and the City has allowed additions consistent with the minimum standards of the PC text, and with regard to minimum side yards, the City has only required a minimum of 10 feet between houses.

### Setback Inequity

With the exception of the properties located on cul-de-sacs, most of the properties within the community maintain a 10-foot separation between houses, and therefore, there is no opportunity to expand into the side yards. However, in the few instances where properties are located on cul-de-sacs and provide large side yards exceeding the 10-minimum separation requirement, additions are possible. Since the houses are not technically on the property line (a minimum of 4 feet is provided in most cases), additions closer to the opposite lot line have been allowed so long the minimum 10-foot separation was provided to the neighboring house. Staff recognizes by not requiring a firm minimum setback to the side property line, an inequitable "first-come, first-served" situation is created where one property owner may build-out the side yard area impacting how close a neighbor can build in the future. To resolve this inequity, staff is recommending that in these instances, the Planning Commission should make an interpretation requiring that a minimum 5-foot side setback be provided.

To make this determination, the Planning Commission may determine that the PC text is totally silent on the application of side setbacks in non-zero lot line configurations, and therefore by default, the minimum side setbacks of the Zoning Code would apply. The most appropriate zoning designation in the Zoning Code applicable to the Broadmoor Pacific View community would be the Single-Unit Residential (R-1) District, in which case a minimum side setback of 4 feet would be required. However, in order to achieve a fair and equitable setback while achieving the 10-foot minimum separation requirement, it can be interpreted that a minimum side setback of 5 feet should be provided. To eliminate confusion in the future, staff will prepare a memo to this effect, which will be used to supplement the PC text. An exception will be created for those properties that maintain an "assumed zero-lot line configuration" and that currently provide a 4-foot side setback, in which case they shall be allowed to maintain their existing setback. The memo will also clarify that the "Setback Map" shall be used for the purposes of establishing street and view setbacks.

### Alternatives

If the Planning Commission disagrees with staff's recommendation on the application of side setback requirements, staff suggests the following alternatives:

1. Determine that no side setback is required from a property line, provided there is least 10 feet between houses. This determination is consistent with past practices. If the Planning Commission believes this is the most appropriate determination, staff will prepare a memo supplementing the PC text to this effect.
2. Since the minimum side setback that most properties maintain within the community is 4 feet on one side, the Planning Commission may find that a minimum side setback of 4 feet is appropriate, provided that a total of 10 feet is



provided between residential structures. This alternative would provide some certainty with regard to development limits and would preserve the existing development pattern of the community. If the Planning Commission believes this is the most appropriate determination, a memo supplementing the PC text would be prepared to this effect.

3. Determine that the permitted site plan used for the initial construction of the homes in the community actually controls the allowable building envelopes for each of the lots within the community, including side setbacks. This determination would have the effect of not allowing any additions or remodels beyond the existing building envelopes. If the Planning Commission believes this is the most appropriate determination, a memo supplementing the PC text would be prepared to this effect.
4. The Planning Commission shall make an alternative determination and state reasons for such determination.

#### Environmental Review

This action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

#### Public Notice

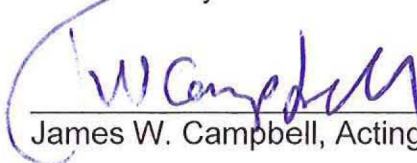
Notice of this agenda item was published in the Daily Pilot, mailed to all property owners located within the Broadmoor Pacific View Planned Community District, and mailed to the Broadmoor Sea View Homeowner's Association.

Prepared by:



Jaime Murillo, Associate Planner

Submitted by:



James W. Campbell, Acting Deputy Director

#### ATTACHMENTS

- PC 1 Broadmoor Pacific View Planned Community Text
- PC 2 Jamie and Patricia White's Letter (Exhibits provided separately due to bulk)
- PC 3 Setback Map
- PC 4 Districting Map





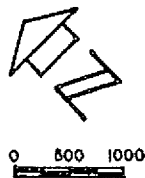
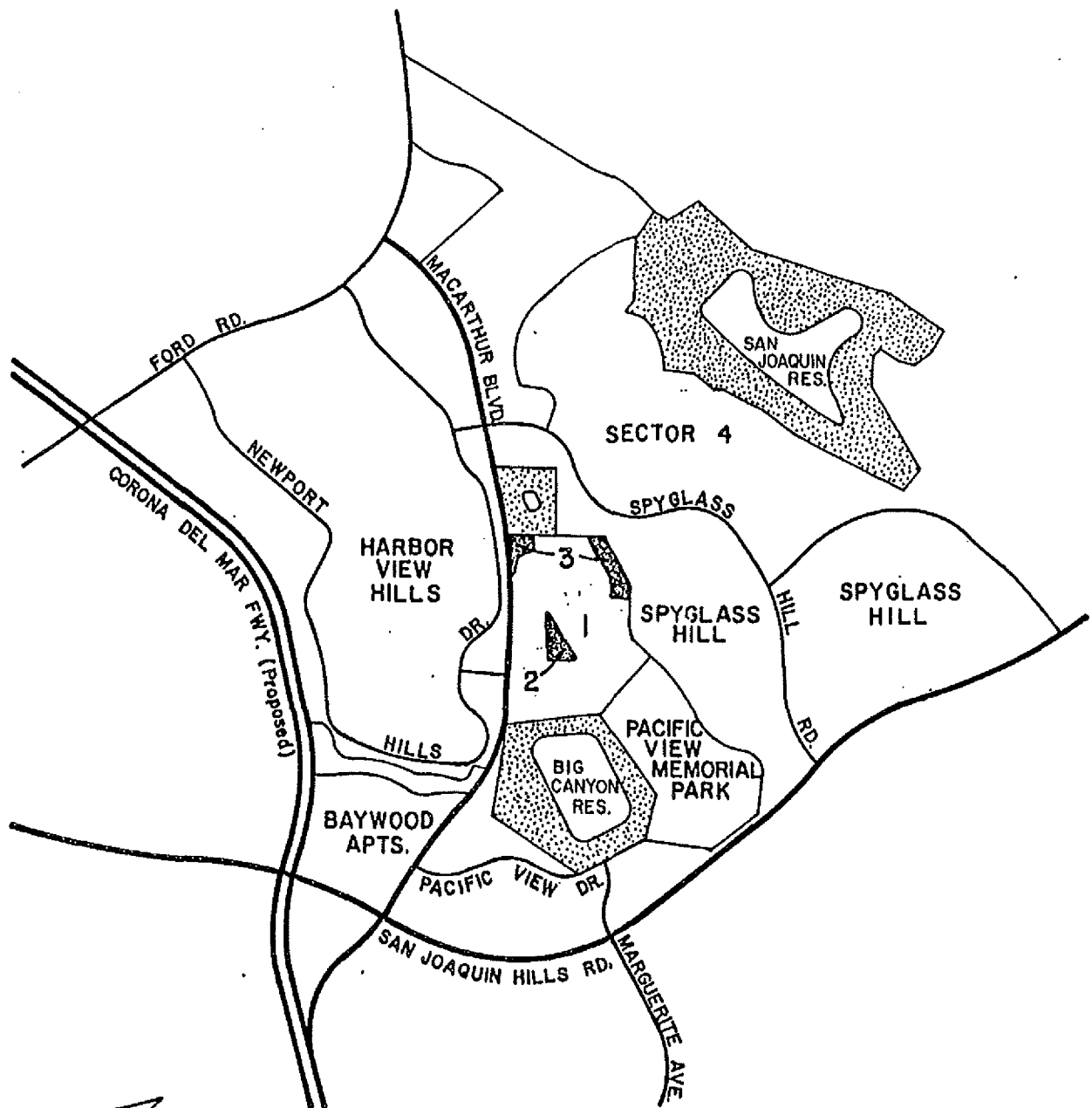
# **Attachment No. PC 1**

Broadmoor Pacific View Planned  
Community Text



**The Broadmoor Pacific View PC (Planned  
Community) District Amendment No. 18**

Adopted by the City Council on July 28, 1975



#### LEGEND

- LOW MEDIUM DENSITY RESIDENTIAL
- PARK AND RECREATION AREA
- OPEN SPACE AREA
- RESERVOIR

## TABLE OF CONTENTS

		<u>Page</u>
INTRODUCTION		
SECTION I	STATISTICAL ANALYSIS	1
SECTION II	GENERAL	1
SECTION III	DEFINITIONS	2
SECTION IV	LOW DENSITY RESIDENTIAL	2
Subsection A	Permitted Uses	2
Subsection B	Minimum Lot Size	3
Subsection C	Maximum Building Height	3
Subsection D	Setbacks from Streets	3
Subsection E	Setbacks from Property Lines	3
Subsection F	Fences, Hedges and Walls	4
Subsection G	Trellis	4
Subsection H	Parking	4
Subsection I	Maximum Site Area Coverage	4
Subsection J	Architectural Features	4
SECTION V	COMMUNITY RECREATIONAL FACILITIES	5
Subsection A	Permitted Uses	5
Subsection B	Maximum Building Height	5
Subsection C	Setbacks	5
Subsection D	Landscaping	6
Subsection E	Parking	6

## **INTRODUCTION**

The Broadmoor Pacific View PC (Planned Community) District within the City of Newport Beach has been prepared in accordance with Amendment No. 18 to the City of Newport Beach General Plan, adopted by the City Council on July 28, 1975, to provide low density residential development within a 50-acre parcel being subdivided from the Pacific View Memorial Park.

The purpose of this PC (Planned Community) District is to provide a method whereby this property may be classified and used for residential development while also allowing flexibility of land use and development standards.

Except as expressly stated within the text of this PC (Planned Community) ordinance, all applicable provisions and requirements of the City of Newport Beach Zoning Law shall apply.

## SECTION I. STATISTICAL ANALYSIS

### BROADMOOR PACIFIC VIEW

<u>Type</u>	<u>Area</u>	<u>Acres</u>	<u>D.U./acre</u>	<u>D.U.</u>	<u>Per/D.U.</u>	<u>Population</u>
Low Density Res.	1	45.9		175	3.6	630
Park	2	2.5				
Natural Open Space	3	1.6				
TOTAL		50.00		175	3.6	630

## SECTION II. GENERAL

An estimated total population of 630 persons is anticipated for the planning area. This figure has been used in estimating the need for community facilities.

### Schools

The community of Pacific View falls within the Newport-Mesa Unified School District. In an effort to anticipate the maximum number of school students to be generated by the total community, the highest student per unit factor was applied.

The following figures represent a projected total student enrollment based upon anticipated numbers of dwelling units to be constructed.

### AREA 1 NEWPORT-MESA UNIFIED SCHOOL DISTRICT

<u>Type</u>	<u>Students/ Dwelling Unit</u>	<u>Dwelling Units</u>	<u>Students</u>
Elementary (k-5)	.55	175	96
Junior High (6-8)	.30	175	53
Senior High (9-12)	.35	175	<u>61</u>
TOTAL			210

### Recreation

Private park and open space areas totaling approximately 2.5 acres are proposed to serve the recreational needs of Broadmoor Pacific View. In addition, a natural open space area has been provided in the north portion of the project area.



All private open and recreational areas within the development boundaries will be maintained by a private community association established by and consisting of homeowners within the subject development.

### Uniform Building Code

No portion of this text withstanding, all construction within this Planned Community shall comply with the regulations of the Uniform Building Code as adopted by the City of Newport Beach.

## **SECTION III. DEFINITIONS**

The following definitions refer to the permitted uses described in the Development Standards contained in this ordinance:

### **1. Conventional Subdivision on a Planned Community**

A conventional subdivision of detached dwellings and their accessory structures on individual lots where the lot size may be less than the required average for the district, but where the density for the entire subdivision meets the required standards and where open space areas are provided for the enhancement and utilization of the overall development.

## **SECTION IV. LOW DENSITY RESIDENTIAL**

### **A. Permitted Uses**

1. Single family detached dwellings.
2. Conventional subdivisions and conventional subdivisions on a Planned Community concept.
3. Parks, playgrounds, recreation or open space and green areas, riding, hiking, and bicycle trails and related facilities or a non-commercial nature.
4. Accessory buildings, structures, and uses where related and incidental to a permitted use.
5. One (1) on-site unlighted sign, not exceeding two (2) square feet in area, to advertise the lease, rental or sale of the property upon which it is located. Such sign may show only the name, address and the phone number of the owner, but shall not show the name, address, telephone number of any other description or identification of any person, firm or corporation other than the owner of said property.
6. Two (2) permanent community identification signs. Such signs may be lighted and may show only the name of the community.
7. One street identification sign at the entrance of each street. Such signs may show the street name, house numbers and owner's name.
8. Community recreational facilities and structures, subject to the development standards contained in Section V, Community Facilities, of this ordinance.

B. Area Per Dwelling

A minimum lot size of 4,500 square feet shall be provided. However, an average area of 8,000 square feet shall be provided for each dwelling unit except as approved by a use permit for cluster development. For the purpose of this section, average area per dwelling shall be defined as the average of all developed areas (to include parks, recreational and permanent open space) exclusive of all areas reserved for vehicular rights-of-way not including private driveways divided by the total number of dwelling units.

C. Maximum Building Height

All buildings shall comply with the restrictions established by the 24/28 foot height limitation district.

D. Setbacks from Streets

The following minimum setbacks shall apply to all dwelling structures (not to include garden walls or fences) adjacent to streets. Said setbacks are to be measured from the curb line.

<u>Street Designation</u>	<u>Setback from Curb Line</u>
Local Access Street	5'
Local Non-Access Collector Street	10'

Garages shall conform to the building setback requirements above except that front facing garage setbacks shall be as follows:

- 1) Where a sidewalk exists, the setback shall be 3 feet or a minimum of 20 feet, measured from the back of walk.
- 2) Where no sidewalk exists, the setback shall be 5 feet or a minimum of 20 feet, measured from back of curb.

Prior to the issuance of building permits for each phase of the project, a final setback map shall be submitted to the Community Development Director indicating the setbacks to all building areas proposed in the development. The Community Development Director shall review said map and all future modifications of the setbacks shown on this map in view of setbacks listed in this ordinance and/or sound planning principles and shall either approve, modify, disapprove the setbacks shown, or refer the matter to the Planning Commission for a determination. In the case of modification or disapproval, the applicant may appeal to the Planning Commission for further consideration.

E. Setbacks from Property Lines

All setbacks listed under this subsection refer to all property lines not affected by Subsection D above. Dwellings may orient towards the opposite property line in order to take advantage of view conditions.

Rear or Front Yard

The building setback on the view side shall be a minimum of three (3) feet from the top of the slope. The rear yard setback shall be a minimum of ten (10) feet from the toe of the slope. The street and view side setbacks shall be established on the approved site plan.

Side Yard

A zero side yard setback between the structure and the lot line shall be permitted on one side provided there are no openings on the zero side yard wall and that a total of ten (10) feet shall be provided between structures.

F. Fences, Hedges, and Walls

Fences shall be limited to a maximum height of eight (8) feet and are allowed within all setback areas, except in the street side and view side setback where a maximum height of three (3) feet shall be maintained. The maximum height of fences within the view side setback may be increased to six (6) feet provided they are wrought iron, clear glass or other open type construction.

G. Trellis

Open trellis and beam construction shall be permitted to extend from the dwelling to within three (3) feet of the property line in the side yard, except that such trellis structures may extend to one (1) foot from the side property line provided they are fire resistant construction in accordance with the requirements of the City of Newport Beach. The maximum height of the trellis shall be eight (8) feet. These areas shall not be considered in calculating lot area coverage; however, trellis areas shall not exceed 20 percent of the remaining open space of a developed lot. Trellis and beam construction shall be so designed as to provide a minimum of 50 percent of the total trellis area as open space for the penetration of light and area to areas which it covers.

H. Parking

Parking for residential uses shall be in the form of not less than two (2) garage spaces and two (2) uncovered guest spaces per dwelling unit. Guest parking may be located on street or off street. Cluster development guest parking shall be as required by a use permit.

I. Maximum Site Area Coverage

For aggregate building coverage, the maximum shall be 50 percent of any lot. For the purpose of this ordinance, coverage shall include all areas under roof, but shall not include trellis areas.

J. Architectural Features

1. Architectural features, including fireplaces, balconies, bay windows, cornices and eaves, may extend to two and one-half (2-1/2) feet into any front, or rear yard setback. These architectural features may extend to one (1) foot from the side yard property line

except that such architectural features may extend to the side property line provided they are fire protected in accordance with the requirements of the City of Newport Beach, and that a minimum of four (4) feet separation is maintained from similar projections or structures on an adjacent lot.

2. Uncovered balconies, decks, patios, walls or railings to a height of four (4) feet above the pad elevation may project a maximum of eleven (11) feet into the view side setback of a maximum of eight (8) feet beyond the top of slope adjacent to the unit, only on approximately 20% of the lots as indicated on the Setback Map. Each balcony, deck, patio, wall or railing shall be selected from one of three standard designs submitted by the developer and shall in each case be subject to the approval of the Modification Committee.

## **SECTION V. COMMUNITY RECREATIONAL FACILITIES**

The following regulations apply to the development of private community recreational facilities. Prior to the issuance of a building permit, plot plans, elevations and any other such documents deemed necessary by the Community Development Developer shall be subject to the review and approval of the Community Development Director.

### **A. Permitted Uses**

The following uses, provided they are in conjunction with private community recreational facilities and not commercial in nature, shall be allowed.

1. Parks, play grounds, tennis courts, pool, recreation or open green areas, riding, hiking and bicycle trails and related facilities.
2. Accessory buildings, structures and uses related and incidental to a permitted use.
3. Signs identifying or giving directions to permitted uses and facilities. No sign shall exceed thirty-five (35) square feet in area.

### **B. Maximum Building Height**

All buildings shall comply with the height restrictions established by the City for the 24/28 foot height limitation district.

### **C. Setbacks**

Twenty-five (25) feet from all residential property lines, and ten (10) feet from any streetside property lines. No structure shall be located closer to a residential structure on an adjacent site than a distance equal to twice the height of the non-residential building. The height of the non-residential structure above the grade elevation of the residential site shall apply. Structures which abut a park, greenbelt or other permanent open space may abut the common property lines.

D. Landscaping

A minimum of ten (10) feet (depth) of continuous landscaping shall be maintained adjacent to all street or highway rights-of-way in the community recreational facilities area, except for perpendicular access driveways and pedestrian walkways. Landscaping shall not exceed thirty (30) inches in height within ten (10) feet of an intersection or access drive.

E. Parking

Parking for twelve (12) vehicles shall be provided within the Community Recreational Facilities area. Location of said parking is subject to review of the Community Development Director. The Community Development Director shall review said facilities and require the amount of off-street parking deemed appropriate, relative to the intended use and activities of such facilities.

## **Attachment No. PC 2**

Jamie and Patricia White's Letter  
(Exhibits provided separately due to bulk)



**James and Patricia White  
2003 Yacht Mischief  
Newport Beach, California 92660  
(949) 759-1434**

January 14, 2011

Mr. Joel Fick  
Acting Community Development Director  
City of Newport Beach  
3300 Newport Boulevard.  
Newport Beach, California 92658

Dear Mr. Fick,

Thank you for meeting with us last Wednesday. The purpose of this letter is to provide you with the documents that support the conclusion that the "approved plot plans" controlled the building envelope for Broadmoor, the original builder of the development, and for any future modifications by the homeowners of Sea View.

**Approved Plot Plans and PC No. 18**

Each of the three plot plans has check numbers and the notation, "appr" with an approval date written in hand on them (see Exhibits 1, 2 and 3). These approved plot plans are referred to in this letter as the "APPs" and show the setbacks and footprint for each house with dimensions to: (1) the street side property line, (2) the blank wall side of the house property line (referred to as the zero side) and (3) in almost all cases, the opposite side property lines. When the window side of two houses face each other and both are oriented toward a common property line and they are both more that 10 feet away from that line, then a dimension is shown for only the house that is closer to the line because when one house is more than 10 feet away from the line, the 10 foot separation rule is satisfied. The opposite side property line occurs eleven times throughout the development and is the line between two houses that face each other. All the houses in Sea View were originally designed with a blank side with no windows and one door opening for fire egress from an atrium and the side opposite the blank side with many windows and usually the front door.

The Broadmoor Pacific View PC (Planned Community) District Amendment No. 18 adopted by the City Council on July 28, 1975 and referred to in this letter as "PC No. 18" (see Exhibit 4) states:

1. In Section IV.D. Setbacks from Streets, that "Prior to the issuance of building permits for each phase of the project, a final setback map shall be submitted to the Community Development Director indicating the setbacks to all building areas proposed in the development".
2. In Section IV.E. Setbacks from Property Lines that "All setbacks listed under this subsection refer to all property lines not affected by Subsection D above. Dwellings may orient towards the opposite property line in order to take advantage of view conditions".



3. In Section IV.E. Rear or Front Yard that "The street and view side setbacks shall be established on the approved site plan". These statements: "a final setback map shall be submitted.....indicating the setbacks to ALL building areas" and "setbacks listed under this subsection refer to ALL property lines" and "setbacks shall be established on THE approved site plan" indicate that there must exist approved plot plans which delineate setbacks from all property lines. The documents which are exhibits to this letter prove conclusively that the plot plans submitted for each of the three tracts which comprise Sea View are the approved plot plans, APPs, which establish the setbacks and building footprint for each house in Sea View.

PC No. 18 was incorporated into The Broadmoor Sea View Covenants, Conditions and Restrictions, the "CC&Rs", which were recorded in the Official Records of Orange County, California on September 14, 1976, in Article VII of the CC&Rs as a document entitled Planned Community District Regulations Broadmoor Pacific View, prepared by Raub, Bein, Frost and Associates on October 23, 1975, and revised and Approved on January 12, 1976 (see Exhibit 5). I have reviewed both PC No. 18 and the Planned Community District Regulations and find them to be substantially the exact same word for word document except for the title. Therefore, the Sea View Homeowners Association is bound by PC No. 18 because it is included in the CC&Rs and since PC No. 18 establishes the setbacks and shows the footprint for each house, then that footprint cannot be modified without approval of both the HOA architectural review committee and the City through a specific process. Thus the open space between and around many of the houses that was created in the original development design is preserved. PC No. 18 was modified by Modification 1055 which was filed with the City on July 6, 1976 (see Exhibit 13) which clearly states that houses were oriented to take advantage of views and the distance between some houses was minimized to create more open space at the end of streets and cul-de-sacs. Our goal has not been to stop remodel activity in Sea View but rather to develop a clear path for a homeowner to follow when designing the remodel of a house that includes building outside the original footprint.

#### **List of Exhibits**

1. Broadmoor Sea View Plot Plan for Tract 9260, marked as Plan Check 456-76 and marked approved 8-31-76. I am providing sheets 1 through 6 of 48. The remaining sheets are building construction drawings.
2. Broadmoor Sea View Plot Plan for Tract 9047, marked as Plan Check 1132 and 1133 and marked approved 11-19-76. I am providing sheets 1 through 4 of 55.
3. Broadmoor Sea View Plot Plan for Tract 9261, marked as Plan Check 1177 and 1178, stamped with a date of Jan 11, 1977 and marked approved 2-3-77. I am providing sheets 1 through 4 of 50.
4. PC No. 18 adopted by the City Council on July 28, 1975.
5. Planned Community District Regs., Broadmoor Pacific View, prepared October 23, 1975 and revised and approved January 12, 1976.
6. Emails between Jamie and Pat White and Jaime Murillo dated September 8<sup>th</sup> and 9<sup>th</sup>, 2010.
7. Map which appears to be a grading map showing street and view side setbacks, no date shown.
8. Letter to Patrick Alford from James and Patricia White dated October 26, 2010.
9. Letter to James White from Patrick Alford dated November 2, 2010.

10. Setback Map for Tract 9047, 167 lots received by the City, October 28, 1975.
11. Map of street addresses for Sea View showing 167 lots but in a different configuration than is shown on Setback Map of 10/28/75.
12. Hand written letter from Jamie White to Patrick Alford, no date, but probably after November 2, 2010.
13. Modification Application Number 1055 dated 7-6-1976.
14. Modification Committee Findings and Action Number 1055 dated July 20, 1976.
15. Broadmoor Seaview Plot Plan for Tract 9047, sheets 1 through 4 for Tract 9260, sheets 3 and 4 for Tract 9261, two sheets not numbered, all part of Modification 1055 marked pages 1 through 9 and stamped submitted July 6, 1976 (although the day of the month is difficult to see).
16. Letter from James Campbell to James White dated November 9, 2010.
17. Tract No. 9260 marked as accepted and filed June 17, 1976.
18. Tract No. 9047 marked as accepted and filed July 22, 1976.
19. Tract No. 9261 marked as accepted and filed July 22, 1976. Note that the survey for all 3 tracts was completed in February of 1976.
20. List of Affected Homeowners.

### **Background**

Sometime last year, our neighbor, Mr. Gregg McConaughy, presented us with a preliminary rough drawing of what he intended to build as a bedroom and bathroom addition. The City Planning Department had told his architect that there was no setback requirement from our common property line. I thought that could not possibly be correct, so I visited the planning department desk on the first floor of your building and over a few days time got several different answers as to what setback is required from our common property line. Finally, I was told that the planning department had had a meeting to discuss the matter and concluded that the common property line setback was zero. I did not believe that was true, so I contacted Jaime Murillo by email (see Exhibit 6) which started my search for the meaning and intent of PC No. 18. Jaime concluded in his email to me that, "PC No. 18 is extremely flexible and doesn't have a minimum side yard setback requirement, with the exception that buildings must maintain a minimum 10-foot separation".

Still not satisfied my wife and I met with Jaime at which time he provided us with what looked like a preliminary grading map which showed only street and view side setbacks (see Exhibit 7). This map is a very preliminary grading plan, as there are significant differences between how the project was graded and the contour lines on the plan, and may have been used to propose some preliminary ideas about street and view side setbacks. The setbacks from the street shown on the map are in many cases different than what is shown on the APPs, which do correctly show what was actually built. Jaime explained that side yard setbacks were not addressed in PC No. 18. My wife and then went to lunch, discussed our meeting with Jaime and concluded that what we were being told just did not add up. We have each been in the real estate development business for over twenty years. We then went back to the city offices, found Jaime, and told him we were not satisfied. Jaime then asked Patrick and a fellow from the building department to join an impromptu meeting to discuss this issue.

During this meeting one interesting point that came up was that they did not know when and how the door in the blank wall of each and every house got there. They just did not seem to know when or how that was approved. This is a significant point because it is this door, an opening in the blank side of the house, that caused the house to be a minimum of 4 feet away from the property line instead of the zero setback that is referred to in PC No. 18 Section IV.E., paragraph "Side Yard". The houses are built 10 feet apart as is required under the "Side Yard" paragraph, except those that are the subject of the Modification 1055. Therefore, the zero setback allowance that is specified in the "Side Yard" paragraph was not used due to the opening in the blank wall side of the house and could not be used on the opposite property line because that other side of the house has many windows and in most cases the front door. As Sea View was actually built there is no circumstance that would allow for a zero setback to any property line. The meeting ended with our being told that the City could really not be of any help to us other than to say that the buildings had to be 10 feet apart and beyond that it was up to the Sea View HOA to set the development standards.

Still not satisfied with what I was being told, I wrote a letter to Patrick Alford (see Exhibit 8). In that letter dated October 26, 2010, I conclude that PC No. 18 clearly states that the setbacks from ALL property lines are established by dimensions shown on the approved plot plans, the APPs. In the letter I requested an official written opinion of the setbacks from all property lines as are indicated in the PC No.18. On November 2, 2010, Patrick responded to my letter (see Exhibit 9). I had asked him to provide me with a site or plot plan which showed the setbacks to all property lines as was required in Section IV.D. of PC No. 18. Patrick, in his letter to me concluded that a setback map (see Exhibit 10) was submitted to and approved by the then-Community Development Director as provided for in Section IV.D. of the PC No. 18 text. He noted that only front and rear setbacks were identified. This map, entitled Setback Map, Tract 9047, was received by the City on October 28, 1975 and is another copy of the same map that Jaime gave me.

As I mentioned above, this map is inconsistent with what is built in Sea View. For example, on Yacht Vindex, eleven lots are shown, but only ten lots exist on that street and on Yacht Daphne four lots are shown, but five lots exist on that street. The setbacks of 18 feet from the street, shown on the map, have not been followed in about 20 cases. Further, on lot 146 this map shows a 5' typical setback from toe of slope, while PC No. 18 requires 10'. Finally, the lot lines as shown in many cases are very different from those shown on the APPs. The map does indicate top of slope or view side setbacks to be 3 feet typical as is specified in the PC No. 18 text. Another map (see Exhibit 11) indicating the Sea View street addresses shows many lots in a quite different configuration to that of the "Setback Map" provided to us by Patrick. Patrick's letter in his opening paragraph recites the issue of whether setbacks were established by an approved site plan but he does not address that issue in his letter. At the end of his brief letter he concludes that Section IV.E. "street and view side setbacks" refer to front and rear setbacks and not side setbacks. It is true that the paragraph under Section IV.E. "Rear or Front Yard" defines the setbacks from top of slope or the view side at 3 feet and the toe of slope or rear yard at 10 feet and it also says that these will be established on the approved site plan. It does not say that side yard setbacks will not be established on that same approved site plan. In fact the side yard setbacks are clearly shown on what I have referred to above as the APPs. This is such an

incomplete and incorrect conclusion that I felt the planning department had not conducted a thorough review of my question nor was the department taking my request seriously.

### **Modification No. 1055**

Soon after my meeting with Patrick, while looking at the microfiche copies of various maps for Sea View, I discovered that there were some houses in Sea View that were closer together than 10 feet apart. I wrote a hand written note to Patrick and asked that he look into this issue (see Exhibit 12). Within a day or so, I think, he called me on the telephone and said that he had found a Modification Application No. 1055 dated 7-6-76 and approved 7-20-76 (see Exhibits 13 and 14). Patrick told me that attached to Modification 1055 is a plot plan consisting of nine pages that appears to be dated July 6, 1976, which is the same date that Modification App. 1055 was filed with the City (see Exhibit 15). These plot plan pages do not include any dimensions nor do they include the entire development since Yacht Vindex, Yacht Maria and Yacht Camilla are omitted. This makes sense because those streets did not have lots that were part of Modification 1055. The Modification 1055 form lists the lots that are involved in Modification 1055. All of these lots are at the end of their respective streets and the houses are blank side to blank side, except for lots 1 and 2 of Tract 9047. The house on lot 2 has been oriented to have its blank side toward lot 1 instead of toward lot 3 in order to take advantage of both an ocean and valley view.

Section IV.E. of PC No. 18 "Setbacks from Property Lines" states: "Dwellings may orient towards the opposite property line in order to take advantage of view conditions". In the "Present Use" block of the Modification 1055 form are the hand written words "5' side yards" indicating that side yard setbacks had been set on some plan. In the "Request" block of the form are written the words: "That one lot receive an easement for (undetermined word or letters) use from the other and the side yard setbacks be reduced to 4' each or total 8' ". That is interesting because I had been told that side yard setbacks had not been addressed by PC No. 18 nor established on any document and now we see conclusively that side yard setbacks had been determined, as evidenced by the statements on the Modification 1055 document, and were established on the APPs. Modification 1055 reduced from 5' to 4' the side yard setbacks for the lots specified on Modification 1055. In fact upon careful analysis of all the APPs I have found that except for the specific lot pairs that were the subject of Modification 1055, where the separation was reduced to 8 feet total, all of the other houses are separated by a minimum of 10 feet. An exception to this is the lot pair 22-23 of Tract 9260, which is not part of Modification 1055, is only 8 feet apart. I suspect they were meant to be listed on the Modification 1055 but just did not get listed. It seems that the plan checker did not pick up the discrepancy. Interestingly, most of the houses that are not part of the Modification 1055 have a setback from the property line of 4 feet on the blank wall side of the house. This is a change from what was indicated in the "Present Use" block of Modification 1055. Only lot 2 and the pairs of lots 11-12, 24-25 and 34-35 of Tract 9260 have a setback of 5 feet from the blank wall side of the house to the property line. Lot 12 of Tract 9261 appears to have a 6 foot setback from the blank wall side of the house to the property line.

These discrepancies point to the fact that the only place to see a complete picture of the setbacks that were approved prior to the issuance of building permits is on the APPs. Again, this is the only complete and therefore controlling set of documents, therefore, they must be the "approved plot plans" mentioned in PC No.18. that were to establish all the property line setbacks. The

concept of “approved plot plans” was in the PC No. 18 language and now we see it again in Modification 1055 in the document that indicates that Modification 1055 was approved on the condition: “1. That development shall be in substantial conformance with the approved plot plans”. It is reasonable to assume the when the word “development” is used here it means the entire development and not just the lots that were the subject of Modification 1055. There should be no question that the Sea View development was to proceed in substantial conformance with PC No. 18 as modified by Modification 1055 and all incorporated into The Broadmoor Sea View CC&Rs. Therefore, the Sea View Homeowners Association is bound by PC No, 18, as modified by Modification 1055, because it is part of the CC&Rs.

In the body of the approved Modification 1055 form, its approval is granted on the condition: “That development shall be in substantial conformance with the approved plot plans” and for the following reasons: 1. The proposed development is in general conformance with the Planned Community Development Standards for “Broadmoor Pacific View.” 2. The reduced separation between structures will occur only at the ends of streets or cul-de-sacs where the end dwelling units will be reversed so as to eliminate blank walls along the exterior side yards of the subject lots. 3. The proposed development is a better site solution than originally planned since more open space will be provided at the ends of streets and cul-de-sacs. Because of the language in Modification 1055, the body of evidence that Sea View was to be a planned community developed under standards contained in PC No.18 as modified by Modification 1055, which standards are to be clearly defined in a set of approved plot plans is strong and complete.

### **Meeting with Jim Campbell**

I was therefore completely surprised when Patrick, in view of what he had just provided to me, still denied that there were approved plot plans that controlled the development of Sea View initially and in the future. Therefore, I asked to meet with Jim Campbell to either set up a planning commission hearing or hopefully have Jim understand the evidence and provide me with a written official ruling from the City that the approved plot plans showed the setbacks to all property lines that those setbacks may not be modified without approval from the City and the Sea View architectural committee. The meeting with Jim Campbell was set on November 4, 2010.

My wife and I met with Jim. He listened to my presentation during a one hour meeting with Patrick in attendance. During the meeting Jim seemed to realize that it is difficult to conclude that a zero side yard setback is allowed in Sea View. He said that he thought it would be easy to defend a decision on his part that a four foot side yard setback could be imposed. Patrick did not seem so inclined but the meeting ended with our believing that Jim had understood our presentation. I was quite surprised when I received his letter affirming the planning department’s opinion that a zero side yard setback is allowed in Sea View (see Exhibit 16). He cited the “Side Yard” paragraph of Section IV.E. “A zero side yard setback between the structure and the lot line shall be permitted on one side provided there are no openings on the zero side yard wall and that a total of ten (10) feet shall be provided between structures”. He went on to say: “a zero foot side setback is permitted as long as a minimum of ten (10) feet is maintained between structures. Beyond that, the PC text is silent in regards to side setbacks”. Jim’s logic fails to include the phrase: “provided there are no openings on the zero side yard wall”. Further, he fails to recognize that Modification 1055 states in the “Present Use” block of

the form, the hand written note, "5' side yards". This setback was required since there is an opening (door) in each and every house.

The document granting approval for Modification 1055 conditions that the development be in substantial conformance with the approved plot plans. Further, as I have recited above the reasons for the approval are that Modification 1055 improves the development since it creates among other considerations more open space for the house at the end of a streets and cul-de-sacs. Jim interprets that since the zero provision was not used on the blank wall side of the house (it could not be used there because there was an opening) that it could be used on the opposite property line as it was referred to in the first paragraph of Section IV.E. That interpretation ignores the fact that the side of the house that is opposite the blank wall always contains multiple windows and often the front door and, therefore, would not be eligible for a zero setback.

### **Conclusion and Other Affected Lots**

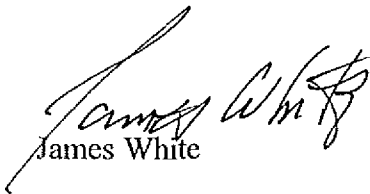
In the beginning of this letter I said that this all began because my neighbor wants to add a bedroom and bathroom to his house. The Sea View Architectural Review Committee, "ARC" approved his plans after meeting with the planning department and being told that a zero side yard setback was allowed as long as the structures were 10' apart. Subsequently, we appealed that decision to the HOA board of directors and they overturned the approval because as was stated in the HOA attorney's letter to McConaughy: "the ARC was not aware of PC No. 18." Further, the Board determined that in view of the 10' foot separation of structures provision in PC No.18 that in any event a 5 foot side yard setback should be the compromise for the common property line between our two houses.

McConaughy has recently resubmitted plans to the ARC with the 5 foot setback. We are an original owner of our home and have believed for the 30 plus years we have lived here that the open space between our homes was to be permanent and that our view of the valley could not be blocked by landscaping or structures. The view issue we will leave for the judgment of the ARC and HOA Board but the issue of whether the APP controls the footprint of the original houses and that a change to that footprint is a change to PC No. 18 is really the subject and essence of this letter. I have included in this letter copies of the final Tract maps 9047, 9260 and 9261 (see Exhibits 17, 18 and 19). All the documents I have presented in this letter conclusively show that there are approved plot plans and that Modification 1055 conditions that the development must be in substantial compliance with those approved plot plans. Therefore, it should be concluded that for a Sea View homeowner to add new construction to his home outside the original footprint, approval from the Sea View ARC must be granted and then an application and approval to modify PC No.18 must be secured from the City. This would be a most reasonable conclusion given the overwhelming evidence and analysis that we have provided in letter. In cases where there is no opposition from neighboring lots, the City approvals could be granted administratively. However, in the event of opposition, the homeowner proposing the modification of PC No. 18 would have the opportunity to request a planning commission hearing. If there is a dispute, then a public hearing affords the parties the opportunity to present their argument to the full planning commission, an unbiased body accustomed to making such decisions. This creates a professional and experienced forum at little cost to all concerned.

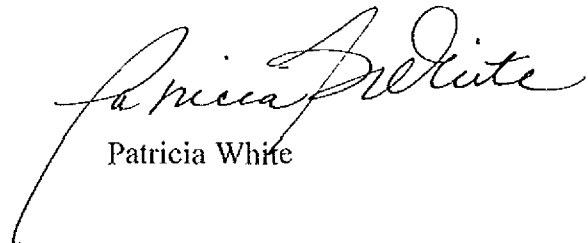
There are 20 other property owners in Sea View who are affected by this common property line situation. I have attached a list of their names and addresses (see Exhibit 20). I have visually inspected each lot and each of their homes seems to be in its original side yard building footprint. This would then be the first time in Sea View that this situation has come up. I have contacted each affected property owner and most of them want to be informed and included in discussions because this outcome will set a precedent for future development of their lots and their neighbor's lot.

We thank you for your courtesy and interest in conducting a thorough review of this issue. Also, we want to acknowledge the time and courtesy that Jaime, Patrick and Jim have shown us throughout this process.

Sincerely,



James White



Patricia White

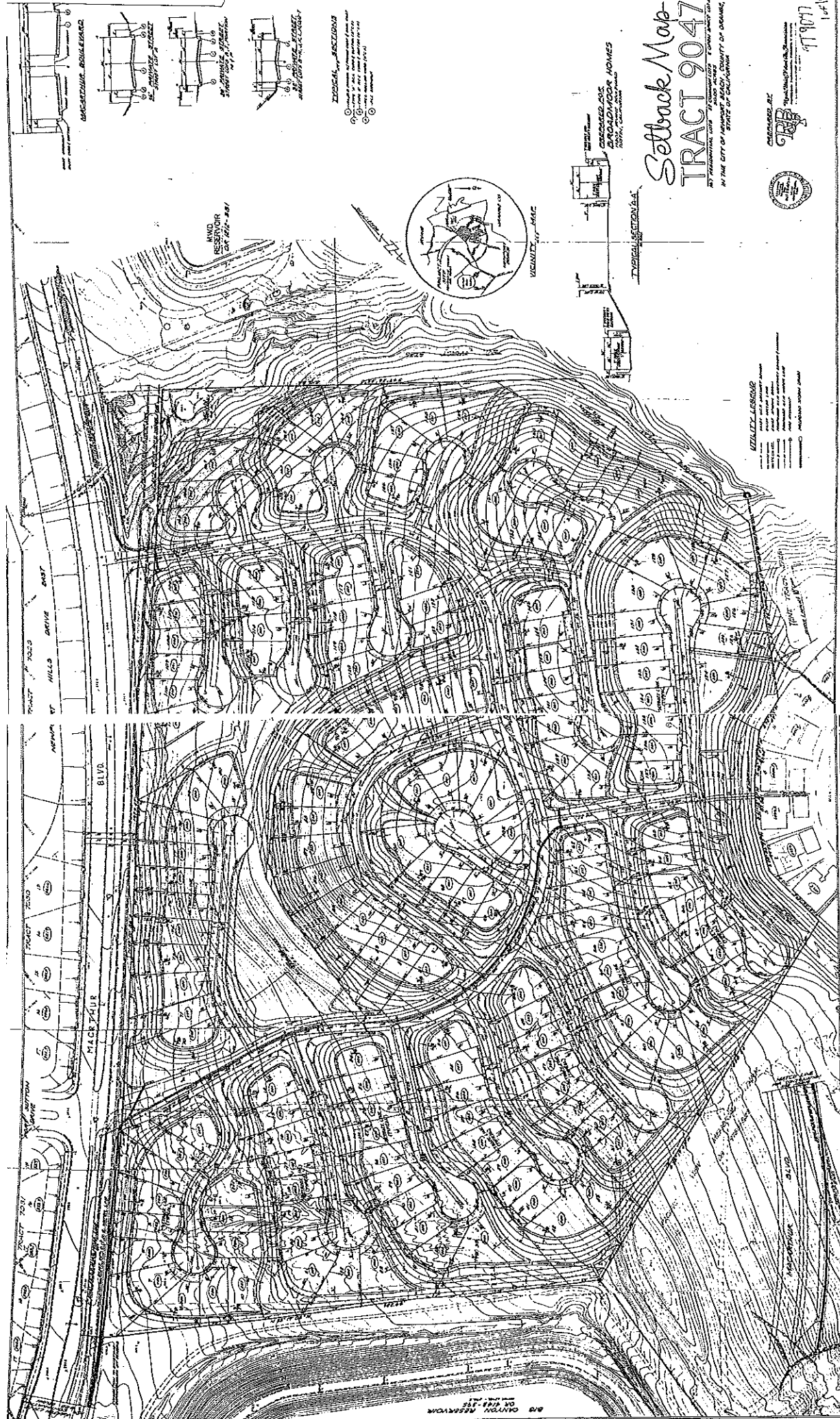
Cc: Dana Smith, Assistant City Manager (without Exhibits)  
Councilman Keith Curry (without Exhibits)

# **Attachment No. PC 3**

Setback Map







# Setback Map TRACT 9047

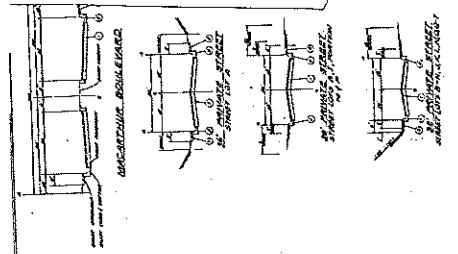
ALL DIMENSIONS ARE IN FEET AND INCHES  
AND ARE TO BE USED AS A GUIDE ONLY  
IN THE CITY OF CHICAGO

CHICAGO, ILL.  
JAN 1917



UTILITY LEGEND

1	Water Main
2	Gas Main
3	Sanitary Sewer
4	Storm Sewer
5	Electric Power Line
6	Telephone Line
7	Gasoline Pipe
8	Water Pipe
9	Gas Pipe
10	Sanitary Sewer
11	Storm Sewer
12	Electric Power Line
13	Telephone Line
14	Gasoline Pipe
15	Water Pipe
16	Gas Pipe
17	Sanitary Sewer
18	Storm Sewer
19	Electric Power Line
20	Telephone Line
21	Gasoline Pipe
22	Water Pipe
23	Gas Pipe
24	Sanitary Sewer
25	Storm Sewer
26	Electric Power Line
27	Telephone Line
28	Gasoline Pipe
29	Water Pipe
30	Gas Pipe
31	Sanitary Sewer
32	Storm Sewer
33	Electric Power Line
34	Telephone Line
35	Gasoline Pipe
36	Water Pipe
37	Gas Pipe
38	Sanitary Sewer
39	Storm Sewer
40	Electric Power Line
41	Telephone Line
42	Gasoline Pipe
43	Water Pipe
44	Gas Pipe
45	Sanitary Sewer
46	Storm Sewer
47	Electric Power Line
48	Telephone Line
49	Gasoline Pipe
50	Water Pipe
51	Gas Pipe
52	Sanitary Sewer
53	Storm Sewer
54	Electric Power Line
55	Telephone Line
56	Gasoline Pipe
57	Water Pipe
58	Gas Pipe
59	Sanitary Sewer
60	Storm Sewer
61	Electric Power Line
62	Telephone Line
63	Gasoline Pipe
64	Water Pipe
65	Gas Pipe
66	Sanitary Sewer
67	Storm Sewer
68	Electric Power Line
69	Telephone Line
70	Gasoline Pipe
71	Water Pipe
72	Gas Pipe
73	Sanitary Sewer
74	Storm Sewer
75	Electric Power Line
76	Telephone Line
77	Gasoline Pipe
78	Water Pipe
79	Gas Pipe
80	Sanitary Sewer
81	Storm Sewer
82	Electric Power Line
83	Telephone Line
84	Gasoline Pipe
85	Water Pipe
86	Gas Pipe
87	Sanitary Sewer
88	Storm Sewer
89	Electric Power Line
90	Telephone Line
91	Gasoline Pipe
92	Water Pipe
93	Gas Pipe
94	Sanitary Sewer
95	Storm Sewer
96	Electric Power Line
97	Telephone Line
98	Gasoline Pipe
99	Water Pipe
100	Gas Pipe



NOTES:  
1. The map is based on the latest available data.  
2. The map is not to be used as a guide for construction.  
3. The map is not to be used as a guide for surveying.



# **Attachment No. PC 4**

Districting Map



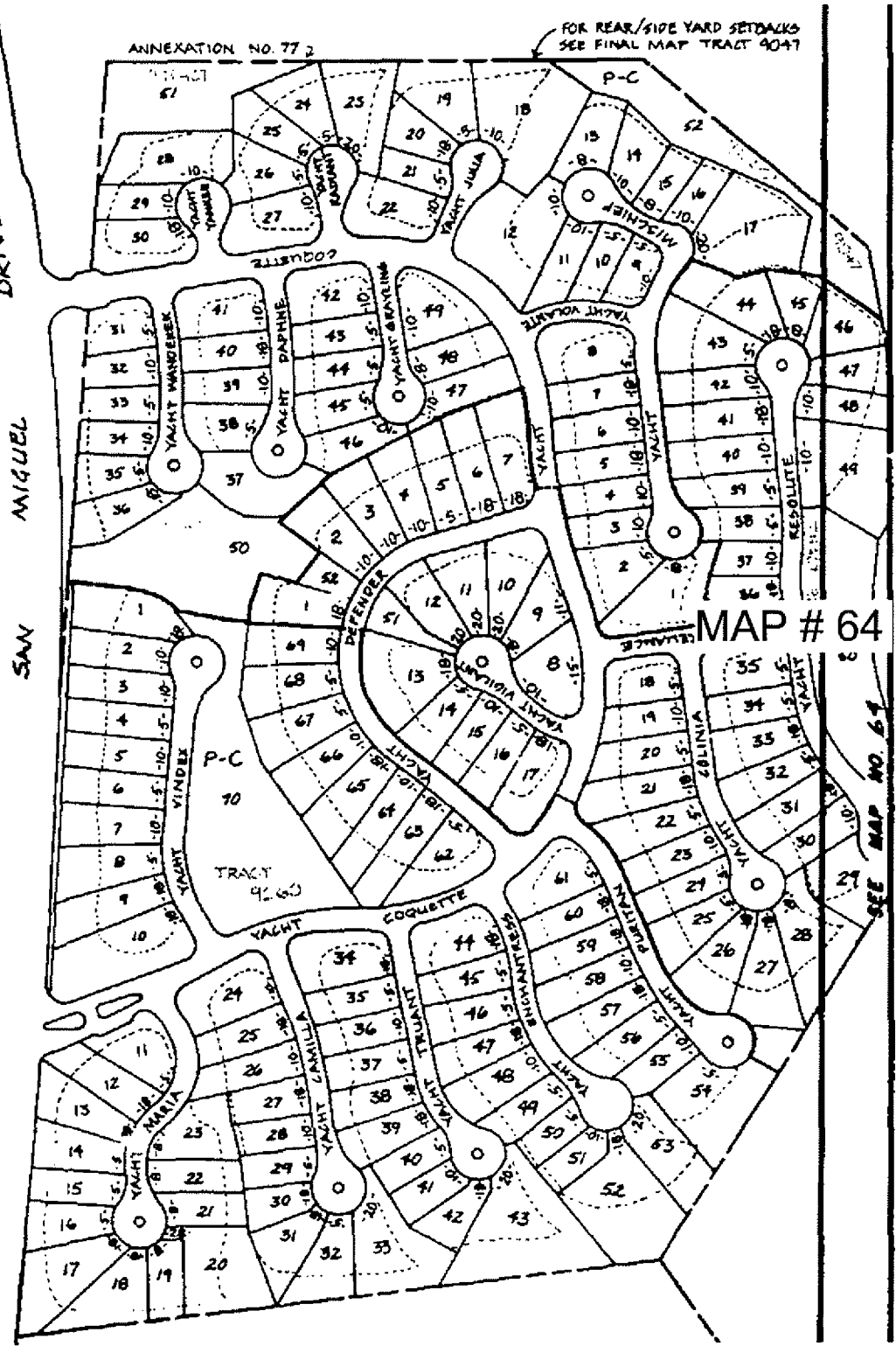
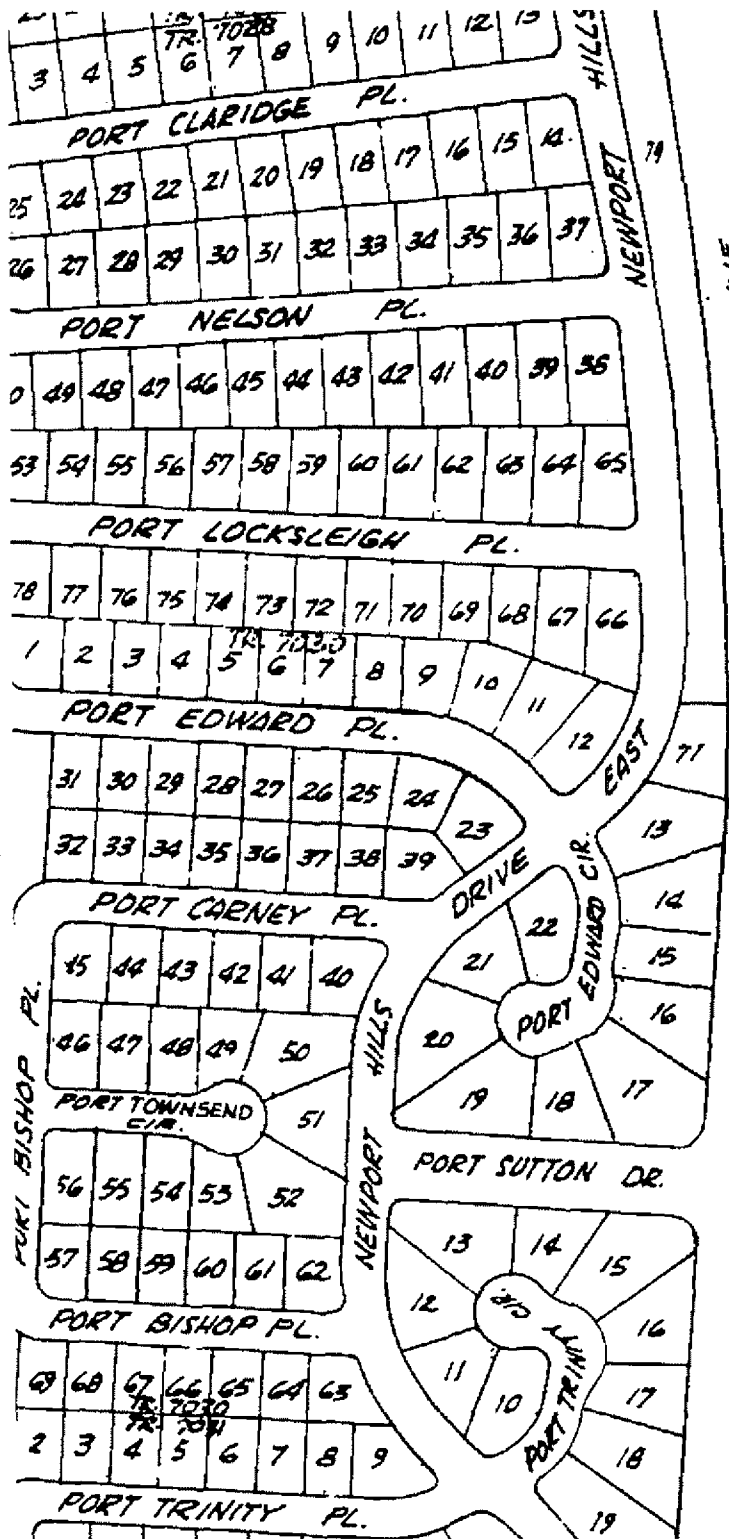


1

၈၂

00

\_\_\_\_\_



MAP # 64

SEE MAP NO. 64

# **Broadmoor SeaView PC No. 18**

## **Letter to Joel Fick Analysis of PC No. 18 and Exhibits**

**January 14, 2011**

**Submitted by: James and Patricia White**





**James and Patricia White  
2003 Yacht Mischief  
Newport Beach, California 92660  
(949) 759-1434**

January 14, 2011

Mr. Joel Fick  
Acting Community Development Director  
City of Newport Beach  
3300 Newport Boulevard.  
Newport Beach, California 92658

Dear Mr. Fick,

Thank you for meeting with us last Wednesday. The purpose of this letter is to provide you with the documents that support the conclusion that the "approved plot plans" controlled the building envelope for Broadmoor, the original builder of the development, and for any future modifications by the homeowners of Sea View.

**Approved Plot Plans and PC No. 18**

Each of the three plot plans has check numbers and the notation, "appr" with an approval date written in hand on them (see Exhibits 1, 2 and 3). These approved plot plans are referred to in this letter as the "APPs" and show the setbacks and footprint for each house with dimensions to: (1) the street side property line, (2) the blank wall side of the house property line (referred to as the zero side) and (3) in almost all cases, the opposite side property lines. When the window side of two houses face each other and both are oriented toward a common property line and they are both more than 10 feet away from that line, then a dimension is shown for only the house that is closer to the line because when one house is more than 10 feet away from the line, the 10 foot separation rule is satisfied. The opposite side property line occurs eleven times throughout the development and is the line between two houses that face each other. All the houses in Sea View were originally designed with a blank side with no windows and one door opening for fire egress from an atrium and the side opposite the blank side with many windows and usually the front door.

The Broadmoor Pacific View PC (Planned Community) District Amendment No. 18 adopted by the City Council on July 28, 1975 and referred to in this letter as "PC No. 18" (see Exhibit 4) states:

1. In Section IV.D. Setbacks from Streets, that "Prior to the issuance of building permits for each phase of the project, a final setback map shall be submitted to the Community Development Director indicating the setbacks to all building areas proposed in the development".

2. In Section IV.E. Setbacks from Property Lines that "All setbacks listed under this subsection refer to all property lines not affected by Subsection D above. Dwellings may orient towards the opposite property line in order to take advantage of view conditions".

3. In Section IV.E. Rear or Front Yard that "The street and view side setbacks shall be established on the approved site plan". These statements: "a final setback map shall be submitted.....indicating the setbacks to ALL building areas" and "setbacks listed under this subsection refer to ALL property lines" and "setbacks shall be established on THE approved site plan" indicate that there must exist approved plot plans which delineate setbacks from all property lines. The documents which are exhibits to this letter prove conclusively that the plot plans submitted for each of the three tracts which comprise Sea View are the approved plot plans, APPs, which establish the setbacks and building footprint for each house in Sea View.

PC No. 18 was incorporated into The Broadmoor Sea View Covenants, Conditions and Restrictions, the "CC&Rs", which were recorded in the Official Records of Orange County, California on September 14, 1976, in Article VII of the CC&Rs as a document entitled Planned Community District Regulations Broadmoor Pacific View, prepared by Raub, Bein, Frost and Associates on October 23, 1975, and revised and Approved on January 12, 1976 (see Exhibit 5). I have reviewed both PC No. 18 and the Planned Community District Regulations and find them to be substantially the exact same word for word document except for the title. Therefore, the Sea View Homeowners Association is bound by PC No. 18 because it is included in the CC&Rs and since PC No. 18 establishes the setbacks and shows the footprint for each house, then that footprint cannot be modified without approval of both the HOA architectural review committee and the City through a specific process. Thus the open space between and around many of the houses that was created in the original development design is preserved. PC No. 18 was modified by Modification 1055 which was filed with the City on July 6, 1976 (see Exhibit 13) which clearly states that houses were oriented to take advantage of views and the distance between some houses was minimized to create more open space at the end of streets and cul-de-sacs. Our goal has not been to stop remodel activity in Sea View but rather to develop a clear path for a homeowner to follow when designing the remodel of a house that includes building outside the original footprint.

#### **List of Exhibits**

1. Broadmoor Sea View Plot Plan for Tract 9260, marked as Plan Check 456-76 and marked approved 8-31-76. I am providing sheets 1 through 6 of 48. The remaining sheets are building construction drawings.
2. Broadmoor Sea View Plot Plan for Tract 9047, marked as Plan Check 1132 and 1133 and marked approved 11-19-76. I am providing sheets 1 through 4 of 55.
3. Broadmoor Sea View Plot Plan for Tract 9261, marked as Plan Check 1177 and 1178, stamped with a date of Jan 11, 1977 and marked approved 2-3-77. I am providing sheets 1 through 4 of 50.
4. PC No. 18 adopted by the City Council on July 28, 1975.
5. Planned Community District Regs., Broadmoor Pacific View, prepared October 23, 1975 and revised and approved January 12, 1976.
6. Emails between Jamie and Pat White and Jaime Murillo dated September 8<sup>th</sup> and 9<sup>th</sup>, 2010.
7. Map which appears to be a grading map showing street and view side setbacks, no date shown.
8. Letter to Patrick Alford from James and Patricia White dated October 26, 2010.
9. Letter to James White from Patrick Alford dated November 2, 2010.

10. Setback Map for Tract 9047, 167 lots received by the City, October 28, 1975.
11. Map of street addresses for Sea View showing 167 lots but in a different configuration than is shown on Setback Map of 10/28/75.
12. Hand written letter from Jamie White to Patrick Alford, no date, but probably after November 2, 2010.
13. Modification Application Number 1055 dated 7-6-1976.
14. Modification Committee Findings and Action Number 1055 dated July 20, 1976.
15. Broadmoor Seaview Plot Plan for Tract 9047, sheets 1 through 4 for Tract 9260, sheets 3 and 4 for Tract 9261, two sheets not numbered, all part of Modification 1055 marked pages 1 through 9 and stamped submitted July 6, 1976 (although the day of the month is difficult to see).
16. Letter from James Campbell to James White dated November 9, 2010.
17. Tract No. 9260 marked as accepted and filed June 17, 1976.
18. Tract No. 9047 marked as accepted and filed July 22, 1976.
19. Tract No. 9261 marked as accepted and filed July 22, 1976. Note that the survey for all 3 tracts was completed in February of 1976.
20. List of Affected Homeowners.

### **Background**

Sometime last year, our neighbor, Mr. Gregg McConaughy, presented us with a preliminary rough drawing of what he intended to build as a bedroom and bathroom addition. The City Planning Department had told his architect that there was no setback requirement from our common property line. I thought that could not possibly be correct, so I visited the planning department desk on the first floor of your building and over a few days time got several different answers as to what setback is required from our common property line. Finally, I was told that the planning department had had a meeting to discuss the matter and concluded that the common property line setback was zero. I did not believe that was true, so I contacted Jaime Murillo by email (see Exhibit 6) which started my search for the meaning and intent of PC No. 18. Jaime concluded in his email to me that, "PC No. 18 is extremely flexible and doesn't have a minimum side yard setback requirement, with the exception that buildings must maintain a minimum 10-foot separation".

Still not satisfied my wife and I met with Jaime at which time he provided us with what looked like a preliminary grading map which showed only street and view side setbacks (see Exhibit 7). This map is a very preliminary grading plan, as there are significant differences between how the project was graded and the contour lines on the plan, and may have been used to propose some preliminary ideas about street and view side setbacks. The setbacks from the street shown on the map are in many cases different than what is shown on the APPs, which do correctly show what was actually built. Jaime explained that side yard setbacks were not addressed in PC No. 18. My wife and then went to lunch, discussed our meeting with Jaime and concluded that what we were being told just did not add up. We have each been in the real estate development business for over twenty years. We then went back to the city offices, found Jaime, and told him we were not satisfied. Jaime then asked Patrick and a fellow from the building department to join an impromptu meeting to discuss this issue.

During this meeting one interesting point that came up was that they did not know when and how the door in the blank wall of each and every house got there. They just did not seem to know when or how that was approved. This is a significant point because it is this door, an opening in the blank side of the house, that caused the house to be a minimum of 4 feet away from the property line instead of the zero setback that is referred to in PC No. 18 Section IV.E., paragraph "Side Yard". The houses are built 10 feet apart as is required under the "Side Yard" paragraph, except those that are the subject of the Modification 1055. Therefore, the zero setback allowance that is specified in the "Side Yard" paragraph was not used due to the opening in the blank wall side of the house and could not be used on the opposite property line because that other side of the house has many windows and in most cases the front door. As Sea View was actually built there is no circumstance that would allow for a zero setback to any property line. The meeting ended with our being told that the City could really not be of any help to us other than to say that the buildings had to be 10 feet apart and beyond that it was up to the Sea View HOA to set the development standards.

Still not satisfied with what I was being told, I wrote a letter to Patrick Alford (see Exhibit 8). In that letter dated October 26, 2010, I conclude that PC No. 18 clearly states that the setbacks from ALL property lines are established by dimensions shown on the approved plot plans, the APPs. In the letter I requested an official written opinion of the setbacks from all property lines as are indicated in the PC No. 18. On November 2, 2010, Patrick responded to my letter (see Exhibit 9). I had asked him to provide me with a site or plot plan which showed the setbacks to all property lines as was required in Section IV.D. of PC No. 18. Patrick, in his letter to me concluded that a setback map (see Exhibit 10) was submitted to and approved by the then-Community Development Director as provided for in Section IV.D. of the PC No. 18 text. He noted that only front and rear setbacks were identified. This map, entitled Setback Map, Tract 9047, was received by the City on October 28, 1975 and is another copy of the same map that Jaime gave me.

As I mentioned above, this map is inconsistent with what is built in Sea View. For example, on Yacht Vindex, eleven lots are shown, but only ten lots exist on that street and on Yacht Daphne four lots are shown, but five lots exist on that street. The setbacks of 18 feet from the street, shown on the map, have not been followed in about 20 cases. Further, on lot 146 this map shows a 5' typical setback from toe of slope, while PC No. 18 requires 10'. Finally, the lot lines as shown in many cases are very different from those shown on the APPs. The map does indicate top of slope or view side setbacks to be 3 feet typical as is specified in the PC No. 18 text. Another map (see Exhibit 11) indicating the Sea View street addresses shows many lots in a quite different configuration to that of the "Setback Map" provided to us by Patrick. Patrick's letter in his opening paragraph recites the issue of whether setbacks were established by an approved site plan but he does not address that issue in his letter. At the end of his brief letter he concludes that Section IV.E. "street and view side setbacks" refer to front and rear setbacks and not side setbacks. It is true that the paragraph under Section IV.E. "Rear or Front Yard" defines the setbacks from top of slope or the view side at 3 feet and the toe of slope or rear yard at 10 feet and it also says that these will be established on the approved site plan. It does not say that side yard setbacks will not be established on that same approved site plan. In fact the side yard setbacks are clearly shown on what I have referred to above as the APPs. This is such an

incomplete and incorrect conclusion that I felt the planning department had not conducted a thorough review of my question nor was the department taking my request seriously.

#### **Modification No. 1055**

Soon after my meeting with Patrick, while looking at the microfiche copies of various maps for Sea View, I discovered that there were some houses in Sea View that were closer together than 10 feet apart. I wrote a hand written note to Patrick and asked that he look into this issue (see Exhibit 12). Within a day or so, I think, he called me on the telephone and said that he had found a Modification Application No. 1055 dated 7-6-76 and approved 7-20-76 (see Exhibits 13 and 14). Patrick told me that attached to Modification 1055 is a plot plan consisting of nine pages that appears to be dated July 6, 1976, which is the same date that Modification App. 1055 was filed with the City (see Exhibit 15). These plot plan pages do not include any dimensions nor do they include the entire development since Yacht Vindex, Yacht Maria and Yacht Camilla are omitted. This makes sense because those streets did not have lots that were part of Modification 1055. The Modification 1055 form lists the lots that are involved in Modification 1055. All of these lots are at the end of their respective streets and the houses are blank side to blank side, except for lots 1 and 2 of Tract 9047. The house on lot 2 has been oriented to have its blank side toward lot 1 instead of toward lot 3 in order to take advantage of both an ocean and valley view.

Section IV.E. of PC No. 18 "Setbacks from Property Lines" states: "Dwellings may orient towards the opposite property line in order to take advantage of view conditions". In the "Present Use" block of the Modification 1055 form are the hand written words "5' side yards" indicating that side yard setbacks had been set on some plan. In the "Request" block of the form are written the words: "That one lot receive an easement for (undetermined word or letters) use from the other and the side yard setbacks be reduced to 4' each or total 8' ". That is interesting because I had been told that side yard setbacks had not been addressed by PC No. 18 nor established on any document and now we see conclusively that side yard setbacks had been determined, as evidenced by the statements on the Modification 1055 document, and were established on the APPs. Modification 1055 reduced from 5' to 4' the side yard setbacks for the lots specified on Modification 1055. In fact upon careful analysis of all the APPs I have found that except for the specific lot pairs that were the subject of Modification 1055, where the separation was reduced to 8 feet total, all of the other houses are separated by a minimum of 10 feet. An exception to this is the lot pair 22-23 of Tract 9260, which is not part of Modification 1055, is only 8 feet apart. I suspect they were meant to be listed on the Modification 1055 but just did not get listed. It seems that the plan checker did not pick up the discrepancy.

Interestingly, most of the houses that are not part of the Modification 1055 have a setback from the property line of 4 feet on the blank wall side of the house. This is a change from what was indicated in the "Present Use" block of Modification 1055. Only lot 2 and the pairs of lots 11-12, 24-25 and 34-35 of Tract 9260 have a setback of 5 feet from the blank wall side of the house to the property line. Lot 12 of Tract 9261 appears to have a 6 foot setback from the blank wall side of the house to the property line.

These discrepancies point to the fact that the only place to see a complete picture of the setbacks that were approved prior to the issuance of building permits is on the APPs. Again, this is the only complete and therefore controlling set of documents, therefore, they must be the "approved plot plans" mentioned in PC No.18. that were to establish all the property line setbacks. The



concept of "approved plot plans" was in the PC No. 18 language and now we see it again in Modification 1055 in the document that indicates that Modification 1055 was approved on the condition: "1. That development shall be in substantial conformance with the approved plot plans". It is reasonable to assume that when the word "development" is used here it means the entire development and not just the lots that were the subject of Modification 1055. There should be no question that the Sea View development was to proceed in substantial conformance with PC No. 18 as modified by Modification 1055 and all incorporated into The Broadmoor Sea View CC&Rs. Therefore, the Sea View Homeowners Association is bound by PC No. 18, as modified by Modification 1055, because it is part of the CC&Rs.

In the body of the approved Modification 1055 form, its approval is granted on the condition: "That development shall be in substantial conformance with the approved plot plans" and for the following reasons: 1. The proposed development is in general conformance with the Planned Community Development Standards for "Broadmoor Pacific View." 2. The reduced separation between structures will occur only at the ends of streets or cul-de-sacs where the end dwelling units will be reversed so as to eliminate blank walls along the exterior side yards of the subject lots. 3. The proposed development is a better site solution than originally planned since more open space will be provided at the ends of streets and cul-de-sacs. Because of the language in Modification 1055, the body of evidence that Sea View was to be a planned community developed under standards contained in PC No. 18 as modified by Modification 1055, which standards are to be clearly defined in a set of approved plot plans is strong and complete.

### **Meeting with Jim Campbell**

I was therefore completely surprised when Patrick, in view of what he had just provided to me, still denied that there were approved plot plans that controlled the development of Sea View initially and in the future. Therefore, I asked to meet with Jim Campbell to either set up a planning commission hearing or hopefully have Jim understand the evidence and provide me with a written official ruling from the City that the approved plot plans showed the setbacks to all property lines that those setbacks may not be modified without approval from the City and the Sea View architectural committee. The meeting with Jim Campbell was set for November 4, 2010.

My wife and I met with Jim. He listened to my presentation during a one hour meeting with Patrick in attendance. During the meeting Jim seemed to realize that it is difficult to conclude that a zero side yard setback is allowed in Sea View. He said that he thought it would be easy to defend a decision on his part that a four foot side yard setback could be imposed. Patrick did not seem so inclined but the meeting ended with our believing that Jim had understood our presentation. I was quite surprised when I received his letter affirming the planning department's opinion that a zero side yard setback is allowed in Sea View (see Exhibit 16). He cited the "Side Yard" paragraph of Section IV.E. "A zero side yard setback between the structure and the lot line shall be permitted on one side provided there are no openings on the zero side yard wall and that a total of ten (10) feet shall be provided between structures". He went on to say: "a zero foot side setback is permitted as long as a minimum of ten (10) feet is maintained between structures. Beyond that, the PC text is silent in regards to side setbacks". Jim's logic fails to include the phrase: "provided there are no openings on the zero side yard wall". Further, he fails to recognize that Modification 1055 states in the "Present Use" block of

the form, the hand written note, "5' side yards". This setback was required since there is an opening (door) in each and every house.

The document granting approval for Modification 1055 conditions that the development be in substantial conformance with the approved plot plans. Further, as I have recited above the reasons for the approval are that Modification 1055 improves the development since it creates among other considerations more open space for the house at the end of a streets and cul-de-sacs. Jim interprets that since the zero provision was not used on the blank wall side of the house (it could not be used there because there was an opening) that it could be used on the opposite property line as it was referred to in the first paragraph of Section IV.E. That interpretation ignores the fact that the side of the house that is opposite the blank wall always contains multiple windows and often the front door and, therefore, would not be eligible for a zero setback.

### **Conclusion and Other Affected Lots**

In the beginning of this letter I said that this all began because my neighbor wants to add a bedroom and bathroom to his house. The Sea View Architectural Review Committee, "ARC" approved his plans after meeting with the planning department and being told that a zero side yard setback was allowed as long as the structures were 10' apart. Subsequently, we appealed that decision to the HOA board of directors and they overturned the approval because as was stated in the HOA attorney's letter to McConaughy: "the ARC was not aware of PC No. 18." Further, the Board determined that in view of the 10' foot separation of structures provision in PC No.18 that in any event a 5 foot side yard setback should be the compromise for the common property line between our two houses.

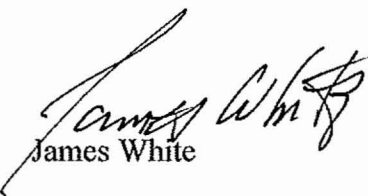
McConaughy has recently resubmitted plans to the ARC with the 5 foot setback. We are an original owner of our home and have believed for the 30 plus years we have lived here that the open space between our homes was to be permanent and that our view of the valley could not be blocked by landscaping or structures. The view issue we will leave for the judgment of the ARC and HOA Board but the issue of whether the APP controls the footprint of the original houses and that a change to that footprint is a change to PC No. 18 is really the subject and essence of this letter. I have included in this letter copies of the final Tract maps 9047, 9260 and 9261 (see Exhibits 17, 18 and 19). All the documents I have presented in this letter conclusively show that there are approved plot plans and that Modification 1055 conditions that the development must be in substantial compliance with those approved plot plans. Therefore, it should be concluded that for a Sea View homeowner to add new construction to his home outside the original footprint, approval from the Sea View ARC must be granted and then an application and approval to modify PC No.18 must be secured from the City. This would be a most reasonable conclusion given the overwhelming evidence and analysis that we have provided in letter. In cases where there is no opposition from neighboring lots, the City approvals could be granted administratively. However, in the event of opposition, the homeowner proposing the modification of PC No. 18 would have the opportunity to request a planning commission hearing. If there is a dispute, then a public hearing affords the parties the opportunity to present their argument to the full planning commission, an unbiased body accustomed to making such decisions. This creates a professional and experienced forum at little cost to all concerned.



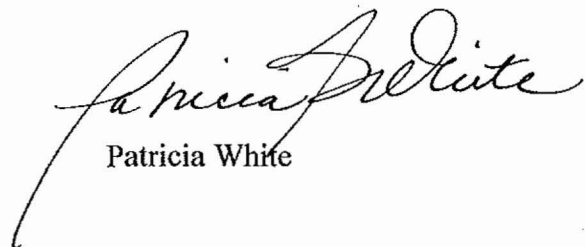
There are 20 other property owners in Sea View who are affected by this common property line situation. I have attached a list of their names and addresses (see Exhibit 20). I have visually inspected each lot and each of their homes seems to be in its original side yard building footprint. This would then be the first time in Sea View that this situation has come up. I have contacted each affected property owner and most of them want to be informed and included in discussions because this outcome will set a precedent for future development of their lots and their neighbor's lot.

We thank you for your courtesy and interest in conducting a thorough review of this issue. Also, we want to acknowledge the time and courtesy that Jaime, Patrick and Jim have shown us throughout this process.

Sincerely,



James White



Patricia White

Cc: Dana Smith, Assistant City Manager (without Exhibits)  
Councilman Keith Curry (without Exhibits)

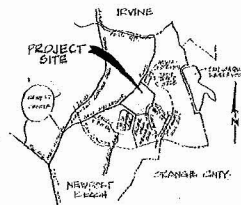
## EXHIBIT 1



# SEA VIEW

PHASE I

broadmoor homes, inc. 17802 irvine blvd. tustin, california 92680 tel. 714-544-4230



VICINITY MAP

## DRAWING INDEX

1	1	TITLE SHEET AND INDEX
2	2-1 TO 4	OVERALL SITE PLAN
3	3-1	OVERALL INDEX
4	4-1	PLAN 1
5	5-1	PLAN 1A
6	5-2	PLAN 1B
7	5-3	PLAN 1C
8	5-4	PLAN 1D
9	5-5	PLAN 1E
10	5-6	PLAN 1F
11	5-7	PLAN 1G
12	5-8	PLAN 1H
13	5-9	PLAN 1I
14	5-10	PLAN 1J
15	5-11	PLAN 1K
16	5-12	PLAN 1L
17	5-13	PLAN 1M
18	5-14	PLAN 1N
19	5-15	PLAN 1O
20	5-16	PLAN 1P
21	5-17	PLAN 1Q
22	5-18	PLAN 1R
23	5-19	PLAN 1S
24	5-20	PLAN 1T
25	5-21	PLAN 1U
26	5-22	PLAN 1V
27	5-23	PLAN 1W
28	5-24	PLAN 1X
29	5-25	PLAN 1Y
30	5-26	PLAN 1Z
31	5-27	PLAN 1AA
32	5-28	PLAN 1AB
33	5-29	PLAN 1AC
34	5-30	PLAN 1AD
35	5-31	PLAN 1AE
36	5-32	PLAN 1AF
37	5-33	PLAN 1AG
38	5-34	PLAN 1AH
39	5-35	PLAN 1AI
40	5-36	PLAN 1AJ
41	5-37	PLAN 1AK
42	5-38	PLAN 1AL
43	5-39	PLAN 1AM
44	5-40	PLAN 1AN
45	5-41	PLAN 1AO
46	5-42	PLAN 1AP
47	5-43	PLAN 1AQ
48	5-44	PLAN 1AR
49	5-45	PLAN 1AS
50	5-46	PLAN 1AT
51	5-47	PLAN 1AU
52	5-48	PLAN 1AV
53	5-49	PLAN 1AW
54	5-50	PLAN 1AX
55	5-51	PLAN 1AY
56	5-52	PLAN 1AZ
57	5-53	PLAN 1BA
58	5-54	PLAN 1BB
59	5-55	PLAN 1BC
60	5-56	PLAN 1BD
61	5-57	PLAN 1BE
62	5-58	PLAN 1BF
63	5-59	PLAN 1BG
64	5-60	PLAN 1BH
65	5-61	PLAN 1BI
66	5-62	PLAN 1BJ
67	5-63	PLAN 1BK
68	5-64	PLAN 1BL
69	5-65	PLAN 1BM
70	5-66	PLAN 1BN
71	5-67	PLAN 1BO
72	5-68	PLAN 1BP
73	5-69	PLAN 1BQ
74	5-70	PLAN 1BR
75	5-71	PLAN 1BS
76	5-72	PLAN 1BT
77	5-73	PLAN 1BU
78	5-74	PLAN 1BV
79	5-75	PLAN 1BW
80	5-76	PLAN 1BX
81	5-77	PLAN 1BY
82	5-78	PLAN 1BZ
83	5-79	PLAN 1CA
84	5-80	PLAN 1CB
85	5-81	PLAN 1CC
86	5-82	PLAN 1CD
87	5-83	PLAN 1CE
88	5-84	PLAN 1CF
89	5-85	PLAN 1CG
90	5-86	PLAN 1CH
91	5-87	PLAN 1CI
92	5-88	PLAN 1CJ
93	5-89	PLAN 1CK
94	5-90	PLAN 1CL
95	5-91	PLAN 1CM
96	5-92	PLAN 1CN
97	5-93	PLAN 1CO
98	5-94	PLAN 1CP
99	5-95	PLAN 1CQ
100	5-96	PLAN 1CR
101	5-97	PLAN 1CS
102	5-98	PLAN 1CT
103	5-99	PLAN 1CU
104	5-100	PLAN 1CV
105	5-101	PLAN 1CW
106	5-102	PLAN 1CX
107	5-103	PLAN 1CY
108	5-104	PLAN 1CZ
109	5-105	PLAN 1DA
110	5-106	PLAN 1DB
111	5-107	PLAN 1DC
112	5-108	PLAN 1DD
113	5-109	PLAN 1DE
114	5-110	PLAN 1DF
115	5-111	PLAN 1DG
116	5-112	PLAN 1DH
117	5-113	PLAN 1DI
118	5-114	PLAN 1DJ
119	5-115	PLAN 1DK
120	5-116	PLAN 1DL
121	5-117	PLAN 1DM
122	5-118	PLAN 1DN
123	5-119	PLAN 1DO
124	5-120	PLAN 1DP
125	5-121	PLAN 1DQ
126	5-122	PLAN 1DR
127	5-123	PLAN 1DS
128	5-124	PLAN 1DT
129	5-125	PLAN 1DU
130	5-126	PLAN 1DV
131	5-127	PLAN 1DW
132	5-128	PLAN 1DX
133	5-129	PLAN 1DY
134	5-130	PLAN 1DZ
135	5-131	PLAN 1EA
136	5-132	PLAN 1EB
137	5-133	PLAN 1EC
138	5-134	PLAN 1ED
139	5-135	PLAN 1EE
140	5-136	PLAN 1EF
141	5-137	PLAN 1EG
142	5-138	PLAN 1EH
143	5-139	PLAN 1EI
144	5-140	PLAN 1EJ
145	5-141	PLAN 1EK
146	5-142	PLAN 1EL
147	5-143	PLAN 1EM
148	5-144	PLAN 1EN
149	5-145	PLAN 1EO
150	5-146	PLAN 1EP
151	5-147	PLAN 1EQ
152	5-148	PLAN 1ER
153	5-149	PLAN 1ES
154	5-150	PLAN 1ET
155	5-151	PLAN 1EU
156	5-152	PLAN 1EV
157	5-153	PLAN 1EW
158	5-154	PLAN 1EX
159	5-155	PLAN 1EY
160	5-156	PLAN 1EZ
161	5-157	PLAN 1FA
162	5-158	PLAN 1FB
163	5-159	PLAN 1FC
164	5-160	PLAN 1FD
165	5-161	PLAN 1FE
166	5-162	PLAN 1FF
167	5-163	PLAN 1FG
168	5-164	PLAN 1FH
169	5-165	PLAN 1FI
170	5-166	PLAN 1FJ
171	5-167	PLAN 1FK
172	5-168	PLAN 1FL
173	5-169	PLAN 1FM
174	5-170	PLAN 1FN
175	5-171	PLAN 1FO
176	5-172	PLAN 1FP
177	5-173	PLAN 1FQ
178	5-174	PLAN 1FR
179	5-175	PLAN 1FS
180	5-176	PLAN 1FT
181	5-177	PLAN 1FU
182	5-178	PLAN 1FV
183	5-179	PLAN 1FW
184	5-180	PLAN 1FX
185	5-181	PLAN 1FY
186	5-182	PLAN 1FZ
187	5-183	PLAN 1GA
188	5-184	PLAN 1GB
189	5-185	PLAN 1GC
190	5-186	PLAN 1GD
191	5-187	PLAN 1GE
192	5-188	PLAN 1GF
193	5-189	PLAN 1GG
194	5-190	PLAN 1GH
195	5-191	PLAN 1GI
196	5-192	PLAN 1GJ
197	5-193	PLAN 1GK
198	5-194	PLAN 1GL
199	5-195	PLAN 1GM
200	5-196	PLAN 1GN
201	5-197	PLAN 1GO
202	5-198	PLAN 1GP
203	5-199	PLAN 1GQ
204	5-200	PLAN 1GR
205	5-201	PLAN 1GS
206	5-202	PLAN 1GT
207	5-203	PLAN 1GU
208	5-204	PLAN 1GV
209	5-205	PLAN 1GW
210	5-206	PLAN 1GX
211	5-207	PLAN 1GY
212	5-208	PLAN 1GZ
213	5-209	PLAN 1HA
214	5-210	PLAN 1HB
215	5-211	PLAN 1HC
216	5-212	PLAN 1HD
217	5-213	PLAN 1HE
218	5-214	PLAN 1HF
219	5-215	PLAN 1HG
220	5-216	PLAN 1HH
221	5-217	PLAN 1HI
222	5-218	PLAN 1HJ
223	5-219	PLAN 1HK
224	5-220	PLAN 1HL
225	5-221	PLAN 1HM
226	5-222	PLAN 1HN
227	5-223	PLAN 1HO
228	5-224	PLAN 1HP
229	5-225	PLAN 1HQ
230	5-226	PLAN 1HR
231	5-227	PLAN 1HS
232	5-228	PLAN 1HT
233	5-229	PLAN 1HU
234	5-230	PLAN 1HV
235	5-231	PLAN 1HW
236	5-232	PLAN 1HX
237	5-233	PLAN 1HY
238	5-234	PLAN 1HZ
239	5-235	PLAN 1IA
240	5-236	PLAN 1IB
241	5-237	PLAN 1IC
242	5-238	PLAN 1ID
243	5-239	PLAN 1IE
244	5-240	PLAN 1IF
245	5-241	PLAN 1IG
246	5-242	PLAN 1IH
247	5-243	PLAN 1II
248	5-244	PLAN 1IJ
249	5-245	PLAN 1IK
250	5-246	PLAN 1IL
251	5-247	PLAN 1IM
252	5-248	PLAN 1IN
253	5-249	PLAN 1IO
254	5-250	PLAN 1IP
255	5-251	PLAN 1IQ
256	5-252	PLAN 1IR
257	5-253	PLAN 1IS
258	5-254	PLAN 1IT
259	5-255	PLAN 1IU
260	5-256	PLAN 1IV
261	5-257	PLAN 1IW
262	5-258	PLAN 1IX
263	5-259	PLAN 1IY
264	5-260	PLAN 1IZ
265	5-261	PLAN 1JA
266	5-262	PLAN 1JB
267	5-263	PLAN 1JC
268	5-264	PLAN 1JD
269	5-265	PLAN 1JE
270	5-266	PLAN 1JF
271	5-267	PLAN 1JG
272	5-268	PLAN 1JH
273	5-269	PLAN 1JI
274	5-270	PLAN 1JJ
275	5-271	PLAN 1JK
276	5-272	PLAN 1JL
277	5-273	PLAN 1JM
278	5-274	PLAN 1JN
279	5-275	PLAN 1JO
280	5-276	PLAN 1JP
281	5-277	PLAN 1JQ
282	5-278	PLAN 1JR
283	5-279	PLAN 1JS
284	5-280	PLAN 1JT
285	5-281	PLAN 1JU
286	5-282	PLAN 1JV
287	5-283	PLAN 1JW
288	5-284	PLAN 1JX
289	5-285	PLAN 1JY
290	5-286	PLAN 1JZ
291	5-287	PLAN 1KA
292	5-288	PLAN 1KB
293	5-289	PLAN 1KC
294	5-290	PLAN 1KD
295	5-291	PLAN 1KE
296	5-292	PLAN 1KF
297	5-293	PLAN 1KG
298	5-294	PLAN 1KH
299	5-295	PLAN 1KI
300	5-296	PLAN 1KJ
301	5-297	PLAN 1KK
302	5-298	PLAN 1KL
303	5-299	PLAN 1KM
304	5-300	PLAN 1KN
305	5-301	PLAN 1KO
306	5-302	PLAN 1KP
307	5-303	PLAN 1KQ
308	5-304	PLAN 1KR
309	5-305	PLAN 1KS
310	5-306	PLAN 1KT
311	5-307	PLAN 1KU
312	5-308	PLAN 1KV
313	5-309	PLAN 1KW
314	5-310	PLAN 1KX
315	5-311	PLAN 1KY
316	5-312	PLAN 1KZ
317	5-313	PLAN 1LA
318	5-314	PLAN 1LB
319	5-315	PLAN 1LC
320	5-316	PLAN 1LD
321	5-317	PLAN 1LE
322	5-318	PLAN 1LF
323	5-319	PLAN 1LG
324	5-320	PLAN 1LH
325	5-321	PLAN 1LI
326	5-322	PLAN 1LJ
327	5-323	PLAN 1LK
328	5-324	PLAN 1LL
329	5-325	PLAN 1LM
330	5-326	PLAN 1LN
331	5-327	PLAN 1LO
332	5-328	PLAN 1LP
333	5-329	PLAN 1LQ
334	5-330	PLAN 1LR
335	5-331	PLAN 1LS
336	5-332	PLAN 1LT
337	5-333	PLAN 1LU
338	5-334	PLAN 1LV
339	5-335	PLAN 1LW
340	5-336	PLAN 1LX
341	5-337	PLAN 1LY
342	5-338	PLAN 1LZ
343	5-339	PLAN 1MA
344	5-340	PLAN 1MB
345	5-341	PLAN 1MC
346	5-342	PLAN 1MD
347	5-343	PLAN 1ME
348	5-344	PLAN 1MF
349	5-345	PLAN 1MG
350	5-346	PLAN 1MH
351	5-347	PLAN 1MI
352	5-348	PLAN 1MJ
353	5-349	PLAN 1MK
354	5-350	PLAN 1ML
355	5-351	PLAN 1MM
356	5-352	PLAN 1MN
357	5-353	PLAN 1MO
358	5-354	PLAN 1MP
359	5-355	PLAN 1MQ
360	5-356	PLAN 1MR
361	5-357	PLAN 1MS
362	5-358	PLAN 1MT
363	5-359	PLAN 1MU
364	5-360	PLAN 1MV
365	5-361	PLAN 1MW
366	5-362	PLAN 1MX
367	5-363	PLAN 1MY
368	5-364	PLAN 1MZ
369	5-365	PLAN 1NA
370	5-366	PLAN 1NB
371	5-367	PLAN 1NC

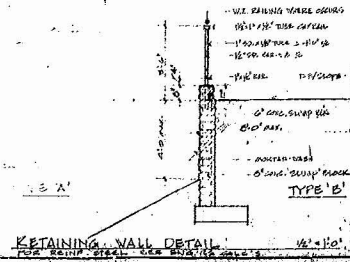
MACARTHUR

BOULEVARD

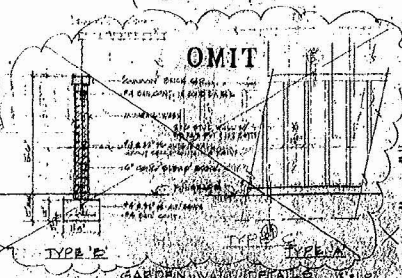
**BROADMOOR HOMES**  
broadmoor homes, inc. 17802 irvine blvd. tustin, ca. 92680 tel. (714) 544-4230

**SEA VIEW**

SEE SHEET No. 2



(SEE SHEET No. 5)



**GARDEN WALL SCHEDULE**

1. 6" CONC. BLOCK WALL W/ STUCCO FINISH AND PADDED BRICK CAP.  
2. 6" CONC. BLOCK WALL W/ STUCCO FINISH AND WOOD CAP.  
3. 6" STUCCO BLOCK WALL W/ ADHESIVE WASH FINISH AND COMMON BRICK CAP.  
4. MASONRY BRICK PLYWOOD (BOTH SIDES) WALL W/ WOOD CAP.

PC 456-76  
2 OF 48

**BROADMOOR SEA VIEW  
PLOT PLAN  
FOR  
TRACT No. 9160**

**REUBEN TRIST & ASSOCIATES**  
PROFESSIONAL ENVIRONMENTAL ENGINEERS & PLANNERS  
17802 IRVINE BLVD., SUITE 100, TUSTIN, CALIF. 92680  
(714) 544-4230

**F.1**  
OF 8 SHEETS

PC456-76  
3 OF 48

BROADMOOR SEA VIEW  
PLOT PLAN  
FOR  
TRACT NS 9100



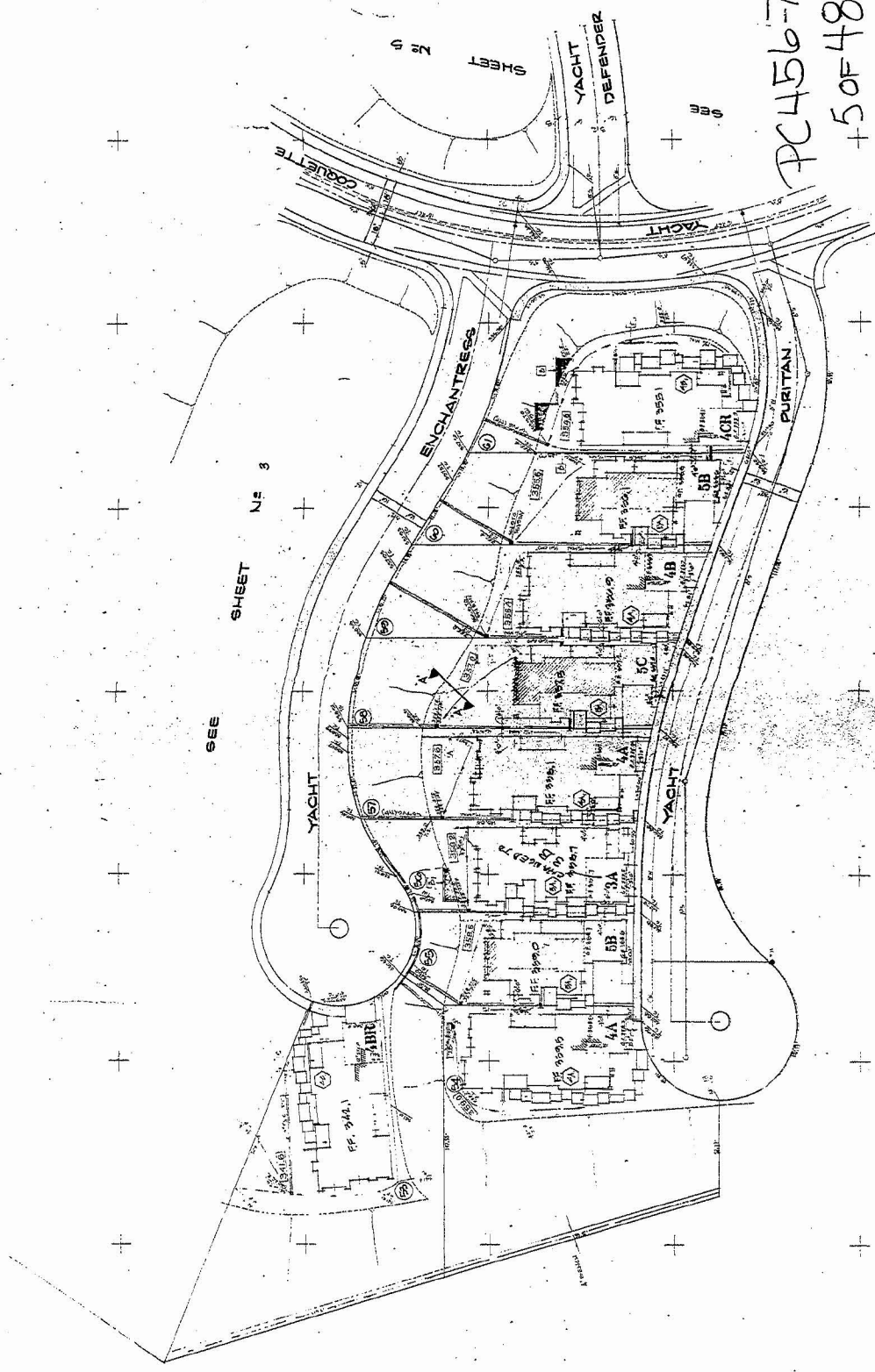
REGISTERED PROFESSIONAL ARCHITECT & LANDSCAPE ARCHITECT  
CALIFORNIA LICENSE NO. 12000  
BROADMOOR HOMES, INC.

SHEET  
F2  
OF 5









SEE SHEET N# 3

PC456-76  
+5 OF 48

SCALE 1" = 20'

BROADMOOR SEA VIEW  
PLOT PLAN  
FOR  
TRACT N# 9100

RB  
Professional Landscaping, Planning & Design

SHEET  
F4

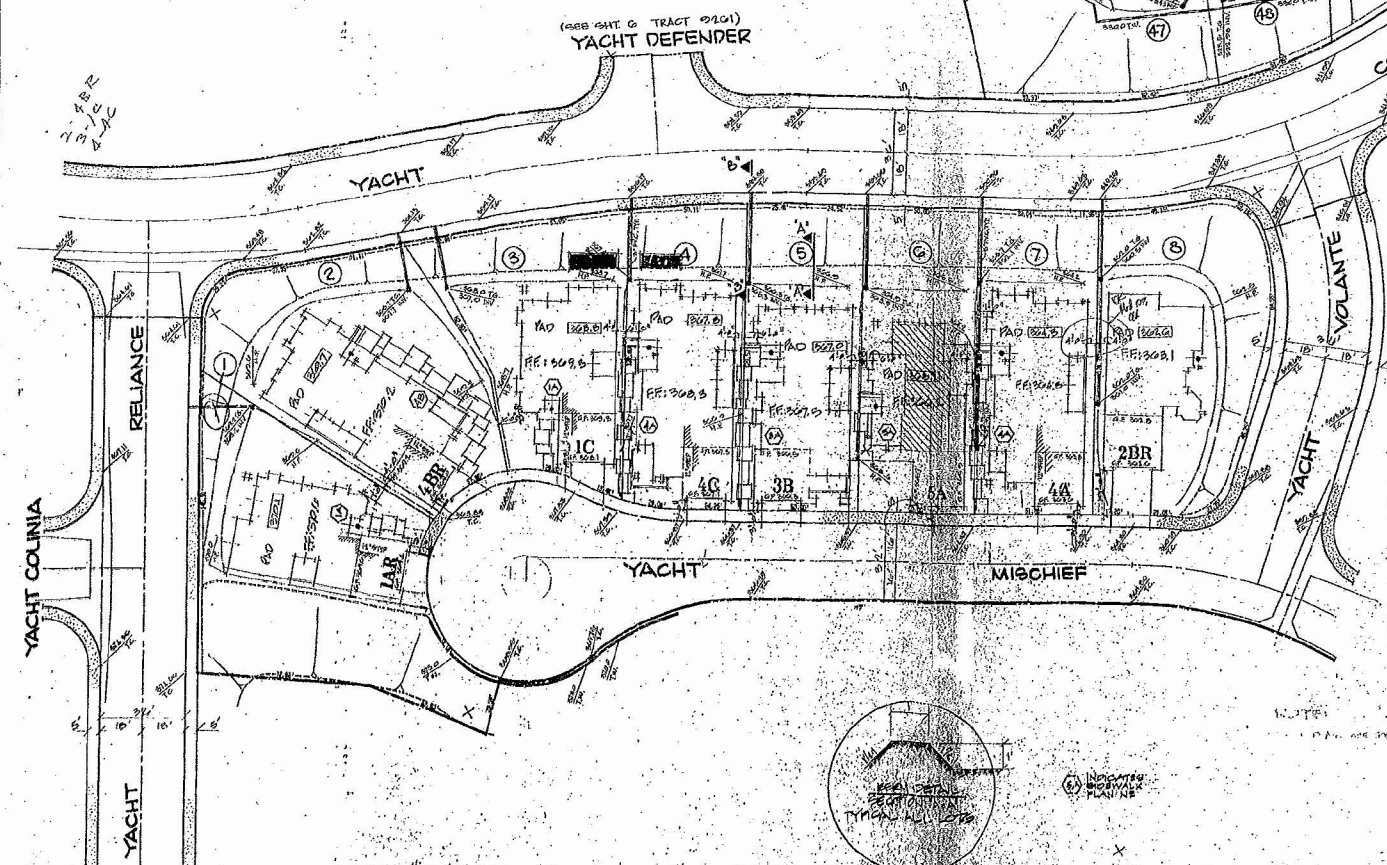
OF 5 SHEETS






## EXHIBIT 2





SHEET  
Nº 2

PL 1132-76  
PL 1133-76  
XAPPZ 11-19-76  
1 of 55  
SCALE  1"=100'

BROADMOOR SEAVIEW  
PLOT PLAN  
FOR  
TRACT NO 9047



SHEET  
12  
OF 4 SHEETS



PC N 32 E 33  
A 2 of 55

BROADMOOR SEA VIEW  
PLOT PLAN  
FOR  
TRACT NO. 9047

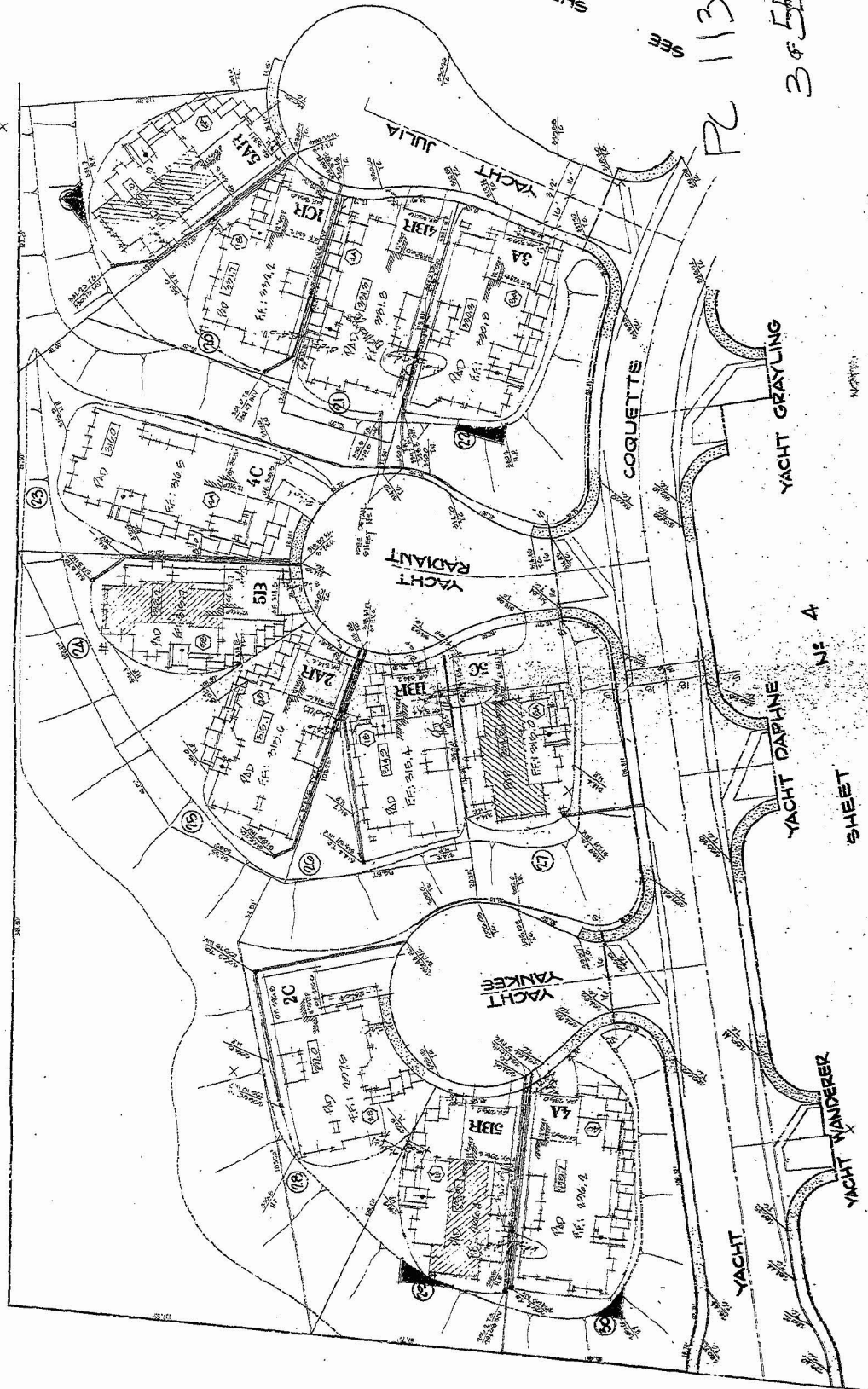
**RB**  
Regis Realty Trust & Associates  
1000 15th Street, Suite 1000  
San Francisco, CA 94103  
Tel: 415.774.1000  
Fax: 415.774.1001  
www.regisrealty.com

SHEET  
22  
OF 4 SHEETS

SEE SHEET NO. 1

SHEET NO. 3

SEE



SHEET

SEE

PL 1132433-76

3 of 55

BROADMOOR SEA VIEW  
PLOT PLAN

TRACT NO 9047



PROFESSIONAL ENGINEER & PLANNER  
REGISTERED PROFESSIONAL ENGINEER & PLANNER  
NO. 12511-101 (EXPIRES 12/31/2011)

SHEET  
3  
OF 4

NOTE:

These plans are for information only and are not to be used for construction purposes.

SHEET

SEE





SEE SHEET No. 3

SEE SHEET No. 4

PZ 1132 133-70  
4 of 55

SEE SHEET No. 5



HEADBOOK SEAVIEW  
PLOT PLAN  
TRACT No. 2047

SEE SHEET No. 1



State of California  
Department of Public Works  
Division of Highways  
San Francisco, California

SHEET No. 4

## EXHIBIT 3





PHASE I & II

## PACIFIC VIEW

# BROADMOOR HOMES

revisions date  
2/1/74

530 - to  
- due  
drawn  
check



1000 1/2 P. O. Box 1000  
New Orleans, LA 70117  
Tel. 504 586-1000

sheet number

**T**

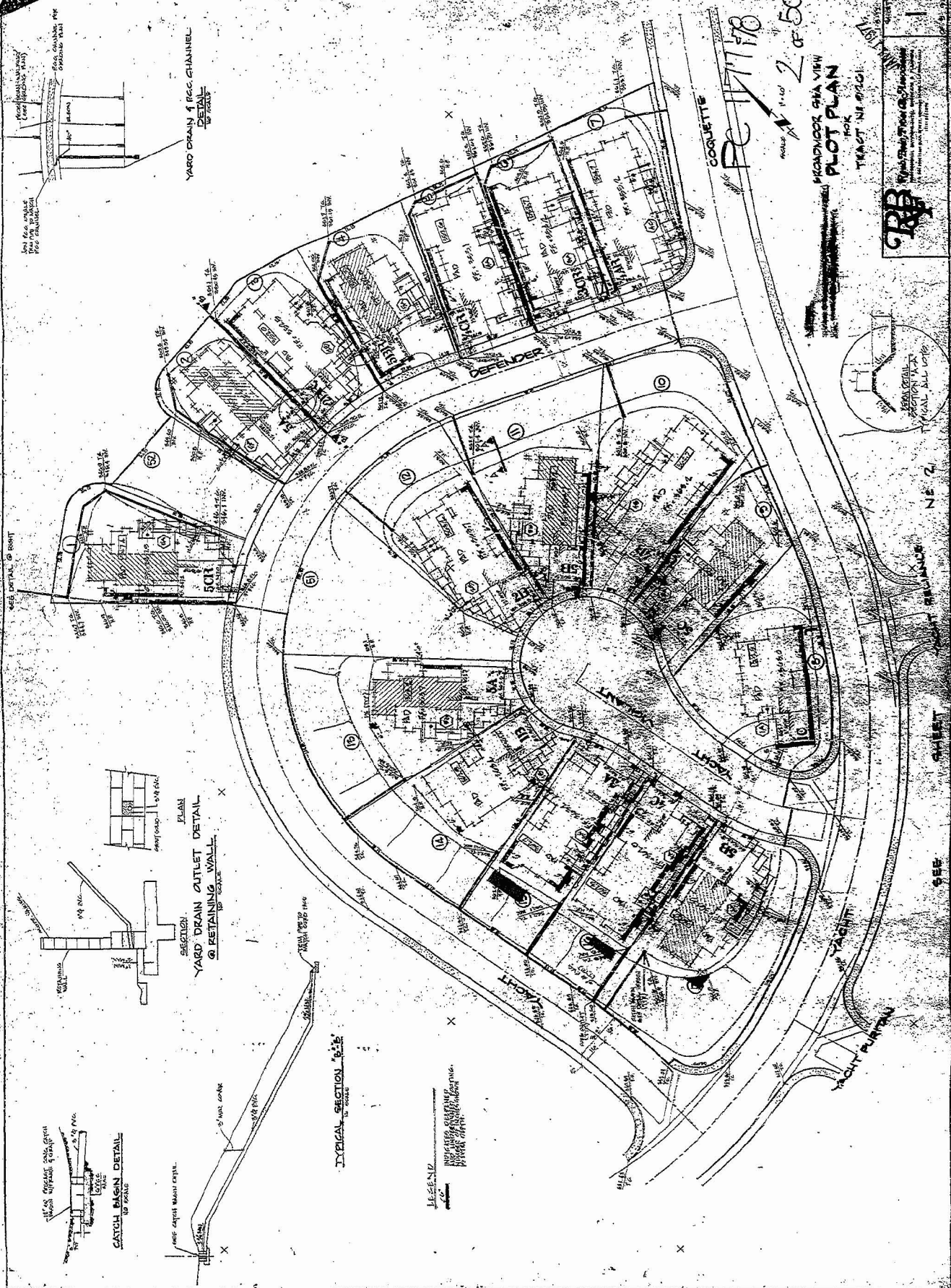
of show

100

PC 1177 & 78-76  
APPR. 2-3-77  
1 of 50

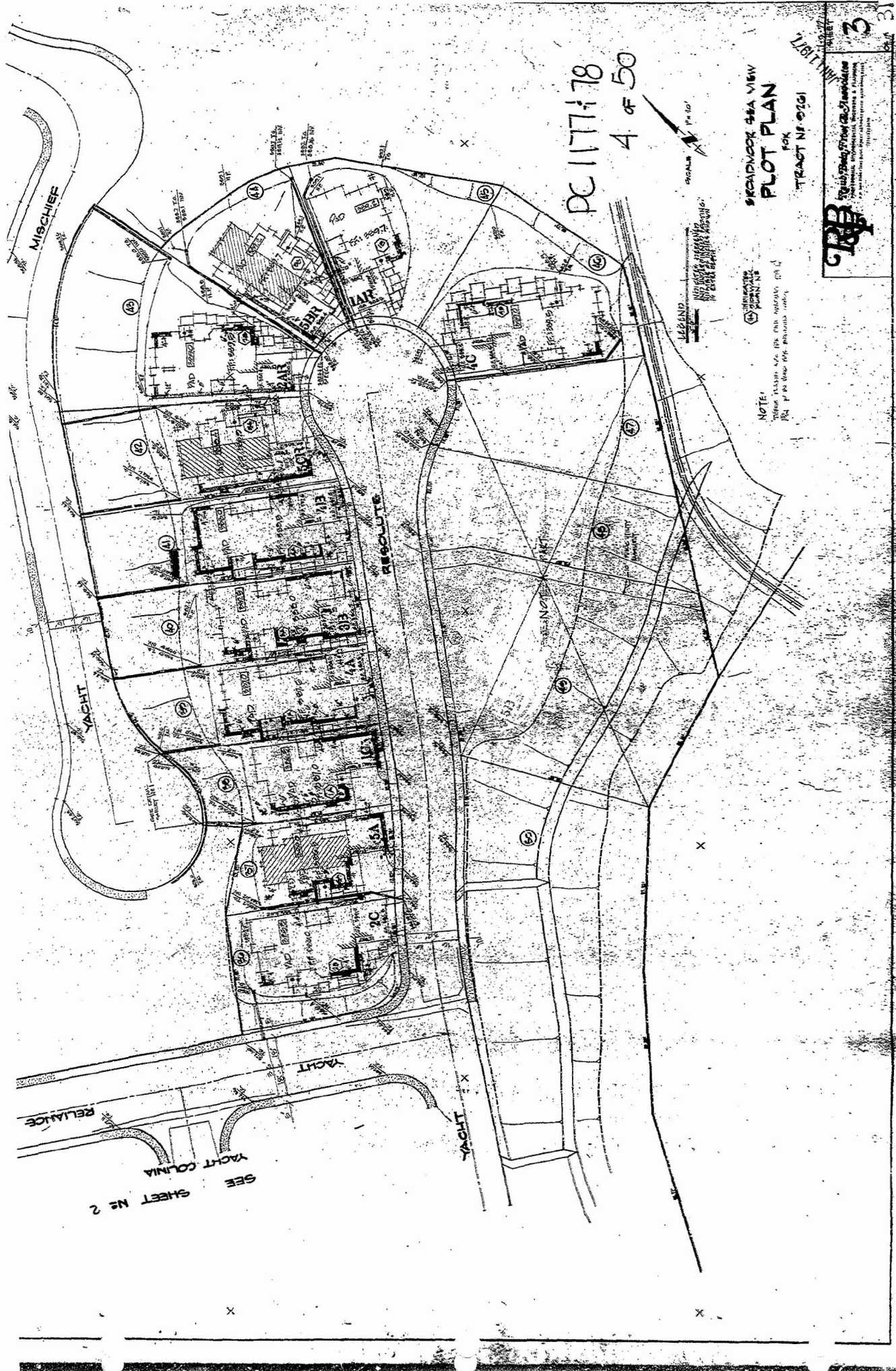
JAN 11 1977











PC 1177-78  
4 of 50

SKETCHED SEA VIEW  
PLOT PLAN  
FOR  
TRACT NO. 0261

NOTE:  
THIS PLAN IS FOR THE PROPOSED TRACT  
AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

3  
3  
3



## EXHIBIT 4





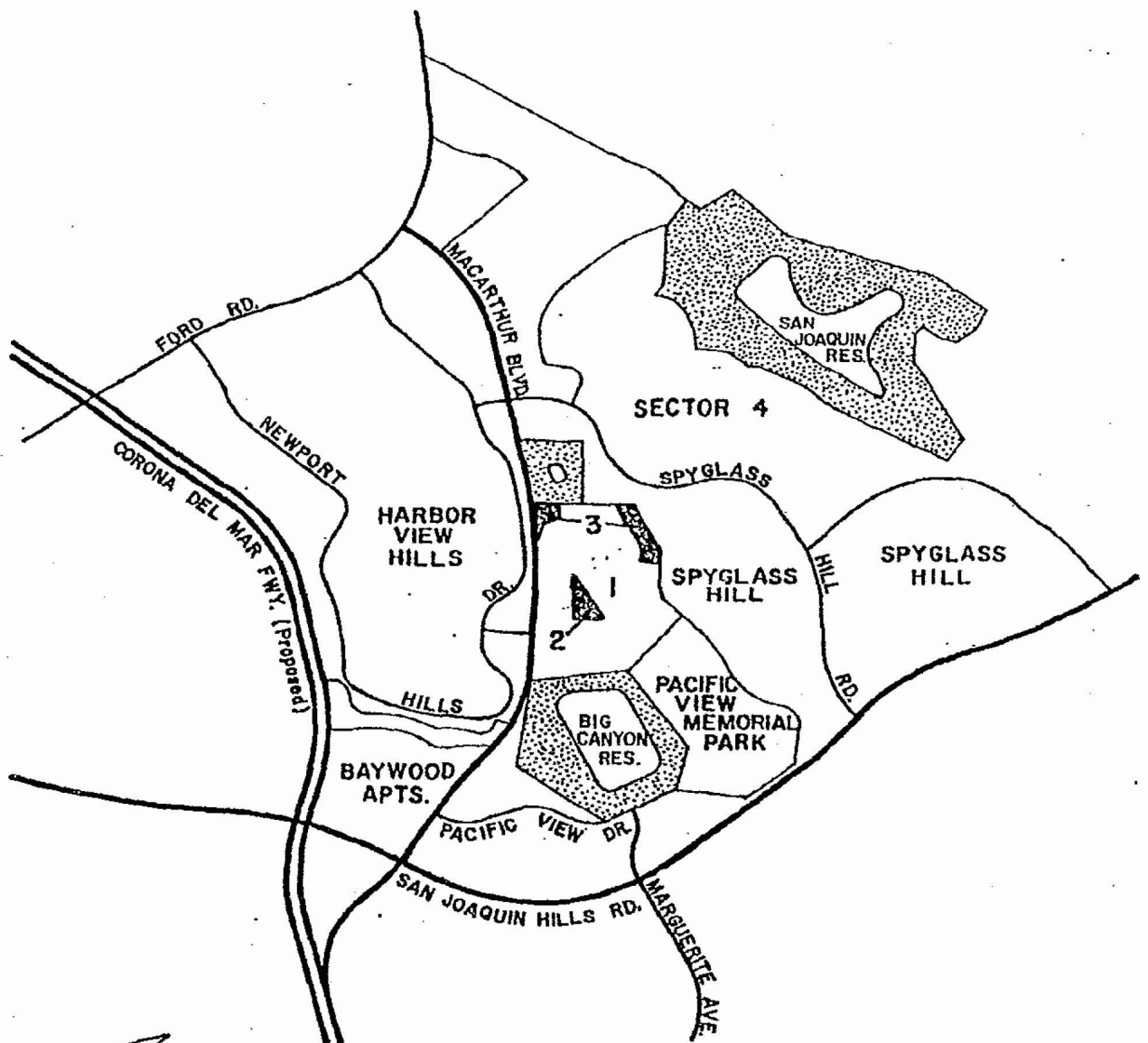
CERTIFIED AS A TRUE AND CORRECT COPY

Kelam L. Brown  
CITY CLERK OF THE CITY OF NEWPORT BEACH

DATE: 8/18/09

**The Broadmoor Pacific View PC (Planned  
Community) District Amendment No. 18**

Adopted by the City Council on July 28, 1975



0 500 1000

#### LEGEND

- LOW MEDIUM DENSITY RESIDENTIAL
- PARK AND RECREATION AREA
- OPEN SPACE AREA
- RESERVOIR



**Raub, Bein, Frost & Associates**  
 PROFESSIONAL ENVIRONMENTAL ENGINEERS & PLANNERS  
 P.O. BOX 3540 • 1461 GUAL STREET • NEWPORT BEACH, CALIFORNIA 92663  
 (714) 833-8078

**BROADMOOR PACIFIC VIEW**  
 LAND USE PLAN

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	
SECTION I                      STATISTICAL ANALYSIS	1
SECTION II                    GENERAL	1
SECTION III                  DEFINITIONS	2
SECTION IV                  LOW DENSITY RESIDENTIAL	2
Subsection A              Permitted Uses	2
Subsection B              Minimum Lot Size	3
Subsection C              Maximum Building Height	3
Subsection D              Setbacks from Streets	3
Subsection E              Setbacks from Property Lines	3
Subsection F              Fences, Hedges and Walls	4
Subsection G              Trellis	4
Subsection H              Parking	4
Subsection I              Maximum Site Area Coverage	4
Subsection J              Architectural Features	4
SECTION V                    COMMUNITY RECREATIONAL FACILITIES	5
Subsection A              Permitted Uses	5
Subsection B              Maximum Building Height	5
Subsection C              Setbacks	5
Subsection D              Landscaping	6
Subsection E              Parking	6

## INTRODUCTION

The Broadmoor Pacific View PC (Planned Community) District within the City of Newport Beach has been prepared in accordance with Amendment No. 18 to the City of Newport Beach General Plan, adopted by the City Council on July 28, 1975, to provide low density residential development within a 50-acre parcel being subdivided from the Pacific View Memorial Park.

The purpose of this PC (Planned Community) District is to provide a method whereby this property may be classified and used for residential development while also allowing flexibility of land use and development standards.

Except as expressly stated within the text of this PC (Planned Community) ordinance, all applicable provisions and requirements of the City of Newport Beach Zoning Law shall apply.

## SECTION I. STATISTICAL ANALYSIS

### BROADMOOR PACIFIC VIEW

<u>Type</u>	<u>Area</u>	<u>Acres</u>	<u>D.U./acre</u>	<u>D.U.</u>	<u>Per/D.U.</u>	<u>Population</u>
Low Density Res.	1	45.9		175	3.6	630
Park	2	2.5				
Natural Open Space	3	1.6				
TOTAL		50.00		175	3.6	630

## SECTION II. GENERAL

An estimated total population of 630 persons is anticipated for the planning area. This figure has been used in estimating the need for community facilities.

### Schools

The community of Pacific View falls within the Newport-Mesa Unified School District. In an effort to anticipate the maximum number of school students to be generated by the total community, the highest student per unit factor was applied.

The following figures represent a projected total student enrollment based upon anticipated numbers of dwelling units to be constructed.

### AREA 1 NEWPORT-MESA UNIFIED SCHOOL DISTRICT

<u>Type</u>	<u>Students/ Dwelling Unit</u>	<u>Dwelling Units</u>	<u>Students</u>
Elementary (k-5)	.55	175	96
Junior High (6-8)	.30	175	53
Senior High (9-12)	.35	175	61
TOTAL			210

### Recreation

Private park and open space areas totaling approximately 2.5 acres are proposed to serve the recreational needs of Broadmoor Pacific View. In addition, a natural open space area has been provided in the north portion of the project area.

All private open and recreational areas within the development boundaries will be maintained by a private community association established by and consisting of homeowners within the subject development.

#### Uniform Building Code

No portion of this text withstanding, all construction within this Planned Community shall comply with the regulations of the Uniform Building Code as adopted by the City of Newport Beach.

### **SECTION III. DEFINITIONS**

The following definitions refer to the permitted uses described in the Development Standards contained in this ordinance:

1. Conventional Subdivision on a Planned Community

A conventional subdivision of detached dwellings and their accessory structures on individual lots where the lot size may be less than the required average for the district, but where the density for the entire subdivision meets the required standards and where open space areas are provided for the enhancement and utilization of the overall development.

### **SECTION IV. LOW DENSITY RESIDENTIAL**

A. Permitted Uses

1. Single family detached dwellings.
2. Conventional subdivisions and conventional subdivisions on a Planned Community concept.
3. Parks, playgrounds, recreation or open space and green areas, riding, hiking, and bicycle trails and related facilities or a non-commercial nature.
4. Accessory buildings, structures, and uses where related and incidental to a permitted use.
5. One (1) on-site unlighted sign, not exceeding two (2) square feet in area, to advertise the lease, rental or sale of the property upon which it is located. Such sign may show only the name, address and the phone number of the owner, but shall not show the name, address, telephone number of any other description or identification of any person, firm or corporation other than the owner of said property.
6. Two (2) permanent community identification signs. Such signs may be lighted and may show only the name of the community.
7. One street identification sign at the entrance of each street. Such signs may show the street name, house numbers and owner's name.
8. Community recreational facilities and structures, subject to the development standards contained in Section V, Community Facilities, of this ordinance.

B. Area Per Dwelling

A minimum lot size of 4,500 square feet shall be provided. However, an average area of 8,000 square feet shall be provided for each dwelling unit except as approved by a use permit for cluster development. For the purpose of this section, average area per dwelling shall be defined as the average of all developed areas (to include parks, recreational and permanent open space) exclusive of all areas reserved for vehicular rights-of-way not including private driveways divided by the total number of dwelling units.

C. Maximum Building Height

All buildings shall comply with the restrictions established by the 24/28 foot height limitation district.

D. Setbacks from Streets

The following minimum setbacks shall apply to all dwelling structures (not to include garden walls or fences) adjacent to streets. Said setbacks are to be measured from the curb line.

<u>Street Designation</u>	<u>Setback from Curb Line</u>
Local Access Street	5'
Local Non-Access Collector Street	10'

Garages shall conform to the building setback requirements above except that front facing garage setbacks shall be as follows:

- 1) Where a sidewalk exists, the setback shall be 3 feet or a minimum of 20 feet, measured from the back of walk.
- 2) Where no sidewalk exists, the setback shall be 5 feet or a minimum of 20 feet, measured from back of curb.

Prior to the issuance of building permits for each phase of the project, a final setback map shall be submitted to the Community Development Director indicating the setbacks to all building areas proposed in the development. The Community Development Director shall review said map and all future modifications of the setbacks shown on this map in view of setbacks listed in this ordinance and/or sound planning principles and shall either approve, modify, disapprove the setbacks shown, or refer the matter to the Planning Commission for a determination. In the case of modification or disapproval, the applicant may appeal to the Planning Commission for further consideration.

E. Setbacks from Property Lines

All setbacks listed under this subsection refer to all property lines not affected by Subsection D above. Dwellings may orient towards the opposite property line in order to take advantage of view conditions.



Rear or Front Yard

The building setback on the view side shall be a minimum of three (3) feet from the top of the slope. The rear yard setback shall be a minimum of ten (10) feet from the toe of the slope. The street and view side setbacks shall be established on the approved site plan.

Side Yard

A zero side yard setback between the structure and the lot line shall be permitted on one side provided there are no openings on the zero side yard wall and that a total of ten (10) feet shall be provided between structures.

F. Fences, Hedges, and Walls

Fences shall be limited to a maximum height of eight (8) feet and are allowed within all setback areas, except in the street side and view side setback where a maximum height of three (3) feet shall be maintained. The maximum height of fences within the view side setback may be increased to six (6) feet provided they are wrought iron, clear glass or other open type construction.

G. Trellis

Open trellis and beam construction shall be permitted to extend from the dwelling to within three (3) feet of the property line in the side yard, except that such trellis structures may extend to one (1) foot from the side property line provided they are fire resistant construction in accordance with the requirements of the City of Newport Beach. The maximum height of the trellis shall be eight (8) feet. These areas shall not be considered in calculating lot area coverage; however, trellis areas shall not exceed 20 percent of the remaining open space of a developed lot. Trellis and beam construction shall be so designed as to provide a minimum of 50 percent of the total trellis area as open space for the penetration of light and area to areas which it covers.

H. Parking

Parking for residential uses shall be in the form of not less than two (2) garage spaces and two (2) uncovered guest spaces per dwelling unit. Guest parking may be located on street or off street. Cluster development guest parking shall be as required by a use permit.

I. Maximum Site Area Coverage

For aggregate building coverage, the maximum shall be 50 percent of any lot. For the purpose of this ordinance, coverage shall include all areas under roof, but shall not include trellis areas.

J. Architectural Features

1. Architectural features, including fireplaces, balconies, bay windows, cornices and eaves, may extend to two and one-half (2-1/2) feet into any front, or rear yard setback. These architectural features may extend to one (1) foot from the side yard property line

except that such architectural features may extend to the side property line provided they are fire protected in accordance with the requirements of the City of Newport Beach, and that a minimum of four (4) feet separation is maintained from similar projections or structures on an adjacent lot.

2. Uncovered balconies, decks, patios, walls or railings to a height of four (4) feet above the pad elevation may project a maximum of eleven (11) feet into the view side setback of a maximum of eight (8) feet beyond the top of slope adjacent to the unit, only on approximately 20% of the lots as indicated on the Setback Map. Each balcony, deck, patio, wall or railing shall be selected from one of three standard designs submitted by the developer and shall in each case be subject to the approval of the Modification Committee.

## SECTION V. COMMUNITY RECREATIONAL FACILITIES

The following regulations apply to the development of private community recreational facilities. Prior to the issuance of a building permit, plot plans, elevations and any other such documents deemed necessary by the Community Development Developer shall be subject to the review and approval of the Community Development Director.

### A. Permitted Uses

The following uses, provided they are in conjunction with private community recreational facilities and not commercial in nature, shall be allowed.

1. Parks, play grounds, tennis courts, pool, recreation or open green areas, riding, hiking and bicycle trails and related facilities.
2. Accessory buildings, structures and uses related and incidental to a permitted use.
3. Signs identifying or giving directions to permitted uses and facilities. No sign shall exceed thirty-five (35) square feet in area.

### B. Maximum Building Height

All buildings shall comply with the height restrictions established by the City for the 24/28 foot height limitation district.

### C. Setbacks

Twenty-five (25) feet from all residential property lines, and ten (10) feet from any streetside property lines. No structure shall be located closer to a residential structure on an adjacent site than a distance equal to twice the height of the non-residential building. The height of the non-residential structure above the grade elevation of the residential site shall apply. Structures which abut a park, greenbelt or other permanent open space may abut the common property lines.

D. Landscaping

A minimum of ten (10) feet (depth) of continuous landscaping shall be maintained adjacent to all street or highway rights-of-way in the community recreational facilities area, except for perpendicular access driveways and pedestrian walkways. Landscaping shall not exceed thirty (30) inches in height within ten (10) feet of an intersection or access drive.

E. Parking

Parking for twelve (12) vehicles shall be provided within the Community Recreational Facilities area. Location of said parking is subject to review of the Community Development Director. The Community Development Director shall review said facilities and require the amount of off-street parking deemed appropriate, relative to the intended use and activities of such facilities.

## EXHIBIT 5



A-2457

PLANNED COMMUNITY DISTRICT REGULATIONS  
BROADMOOR PACIFIC VIEW  
CITY OF NEWPORT BEACH, CALIFORNIA

Prepared By:

RAUB, BEIN, FROST & ASSOCIATES  
1401 Quail Street  
Newport Beach, California 92663

October 23, 1975

Revised and Approved  
January 12, 1976

FINAL  
FILE COPY

DO NOT REMOVE

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
SECTION I                      STATISTICAL ANALYSIS	2
SECTION II                     GENERAL	2
SECTION III                   DEFINITIONS	3
SECTION IV                   LOW DENSITY RESIDENTIAL	3
Subsection A              Permitted Uses	3
Subsection B              Minimum Lot Size	4
Subsection C              Maximum Building Height	4
Subsection D              Setbacks from Streets	4
Subsection E              Setbacks from Property Lines	4
Subsection F              Fences, Hedges and Walls	5
Subsection G              Trellis	5
Subsection H              Parking	5
Subsection I              Maximum Site Area Coverage	5
Subsection J              Architectural Features	6
SECTION V                     COMMUNITY RECREATIONAL FACILITIES	6
Subsection A              Permitted Uses	6
Subsection B              Maximum Building Height	6
Subsection C              Setbacks	6
Subsection D              Landscaping	7
Subsection E              Parking	7

## INTRODUCTION

The Broadmoor Pacific View PC (Planned Community) District within the City of Newport Beach has been prepared in accordance with Amendment No. 18 to the City of Newport Beach General Plan, adopted by the City Council on July 28, 1975, to provide low density residential development within a 50-acre parcel being subdivided from the Pacific View Memorial Park

The purpose of this PC (Planned Community) District is to provide a method whereby this property may be classified and used for residential development while also allowing flexibility of land use and development standards.

Except as expressly stated within the text of this PC (Planned Community) ordinance, all applicable provisions and requirements of the City of Newport Beach Zoning Law shall apply.



## SECTION I. STATISTICAL ANALYSIS

### BROADMOOR PACIFIC VIEW

Type	Area	Acres	D.U./acre	D.U.	Per/D.U.	Population
Low Density Res.	1	45.9		175	3.6	630
Park	2	2.5				
Natural Open Space	3	1.6				
TOTAL		50.0		175	3.6	630

## SECTION II. GENERAL

An estimated total population of 630 persons is anticipated for the planning area. This figure has been used in estimating the need for community facilities.

### Schools

The community of Pacific View falls within the Newport-Mesa Unified School District. In an effort to anticipate the maximum number of school students to be generated by the total community, the highest student per unit factor was applied.

The following figures represent a projected total student enrollment based upon anticipated numbers of dwelling units to be constructed.

### AREA 1 NEWPORT-MESA UNIFIED SCHOOL DISTRICT

Type	Students/ Dwelling Unit	Dwelling Units	Students
Elementary (k-5)	.55	175	96
Junior High (6-8)	.30	175	53
Senior High (9-12)	.35	175	61
TOTAL			210

### Recreation

Private park and open space areas totaling approximately 2.5 acres are proposed to serve the recreational needs of the residents of Broadmoor Pacific View. In addition, a natural open space area has been provided in the north portion of the project area.

All private open and recreational areas within the development boundaries will be maintained by a private community association established by and consisting of homeowners within the subject development.

### Uniform Building Code

No portion of this text withstanding, all construction within this Planned Community shall comply with the regulations of the Uniform Building Code as adopted by the City of Newport Beach.

### SECTION III. DEFINITIONS

The following definitions refer to the permitted uses described in the Development Standards contained in this ordinance:

#### 1. Conventional Subdivision on a Planned Community Concept

A conventional subdivision of detached dwellings and their accessory structures on individual lots where the lot size may be less than the required average for the district, but where the density for the entire subdivision meets the required standards and where open space areas are provided for the enhancement and utilization of the overall development.

### SECTION IV. LOW DENSITY RESIDENTIAL

#### A. Permitted Uses

1. Single family detached dwellings.
2. Conventional subdivisions and conventional subdivisions on a Planned Community concept.
3. Parks, playgrounds, recreation or open space and green areas, riding, hiking, and bicycle trails and related facilities of a non-commercial nature.
4. Accessory buildings, structures, and uses where related and incidental to a permitted use.
5. One (1) onsite unlighted sign, not exceeding two (2) square feet in area, to advertise the lease, rental or sale of the property upon which it is located. Such sign may show only the name, address and the phone number of the owner, but shall not show the name, address, telephone number or any other description or identification of any person, firm or corporation other than the owner of said property.
6. Two (2) permanent community identification signs. Such signs may be lighted and may show only the name of the community.
7. One street identification sign at the entrance of each street. Such signs may show the street name, house numbers, and owners name.
8. Community recreational facilities and structures, subject to the development standards contained in Section V, Community Facilities, of this ordinance.

B. Area Per Dwelling

A minimum lot size of 4,500 square feet shall be provided. However, an average area of 8,000 square feet shall be provided for each dwelling unit except as approved by a use permit for cluster development. For the purpose of this section, average area per dwelling shall be defined as the average of all developed areas (to include parks, recreational and permanent open space) exclusive of all areas reserved for vehicular rights-of-way not including individual private driveways divided by the total number of dwelling units.

C. Maximum Building Height

All buildings shall comply with the restrictions established by the 24/28 foot height limitation district.

D. Setbacks from Streets

The following minimum setbacks shall apply to all dwelling structures (not to include garden walls or fences) adjacent to streets. Said setbacks are to be measured from the curb line.

<u>Street Designation</u>	<u>Setback from Curb Line</u>
Local Access Street	5'
Local Non-Access Collector Street	10'

Garages shall conform to the building setback requirements above except that front facing garage setbacks shall be as follows:

- 1) Where a sidewalk exists, the setback shall be 3 feet or a minimum of 20 feet, measured from the back of walk.
- 2) Where no sidewalk exists, the setback shall be 5 feet or a minimum of 20 feet, measured from back of curb.

Prior to the issuance of building permits for each phase of the project, a final setback map shall be submitted to the Community Development Director indicating the setbacks to all building areas proposed in the development. The Community Development Director shall review said map and all future modifications of the setbacks shown on this map in view of setbacks listed in this ordinance and/or sound planning principles and shall either approve, modify, disapprove the setbacks shown, or refer the matter to the Planning Commission for a determination. In the case of modification or disapproval, the applicant may appeal to the Planning Commission for further consideration.

E. Setbacks from Property Lines

All setbacks listed under this subsection refer to all property lines not affected by Subsection D above. Dwellings may orient towards the opposite property line in order to take advantage of view conditions.

#### Rear or Front Yard

The building setback on the view side shall be a minimum of three (3) feet from the top of slope. The rear yard setback for nonview lots shall be a minimum of ten (10) feet from the toe of slope. The street and view side setbacks shall be established on the approved site plan.

#### Side Yard

A zero side yard setback between the structure and the lot line shall be permitted on one side provided there are no openings on the zero side yard wall and that a total of ten (10) feet shall be provided between structures.

#### F. Fences, Hedges, and Walls

Fences shall be limited to a maximum height of eight (8) feet and are allowed within all setback areas, except in the street side and view side setback where a maximum height of three (3) feet shall be maintained. The maximum height of fences within the view side setback may be increased to six (6) feet provided they are of wrought iron, clear glass, or other open type construction.

#### G. Trellis

Open trellis and beam construction shall be permitted to extend from the dwelling to within three (3) feet of the property line in the side yard, except that such trellis structures may extend to one (1) foot from the side property line provided they are fire resistant construction in accordance with the requirements of the City of Newport Beach. The maximum height of the trellis shall be eight (8) feet. These areas shall not be considered in calculating lot area coverage; however, trellis areas shall not exceed 20 percent of the remaining open space of a developed lot.

Trellis and beam construction shall be so designed as to provide a minimum of 50 percent of the total trellis area as open space for the penetration of light and area to areas which it covers.

#### H. Parking

Parking for residential uses shall be in the form of not less than two (2) garage spaces and two (2) uncovered guest spaces per dwelling unit. Guest parking may be located onstreet or offstreet. Cluster development guest parking shall be as required by a use permit.

#### I. Maximum Site Area Coverage

For aggregate building coverage, the maximum shall be 50 percent of any lot. For the purpose of this ordinance, coverage shall include all areas under roof, but shall not include trellis areas.

J. Architectural Features

1. Architectural features, including fireplaces, balconies, bay windows, cornices and eaves, may extend to two and one-half (2-1/2) feet into any front, or rear yard setback. These architectural features may extend to one (1) foot from the side yard property line except that such architectural features may extend to the side property line provided they are fire protected in accordance with the requirements of the City of Newport Beach, and that a minimum of four (4) feet separation is maintained from similar projections or structures on an adjacent lot.
2. Uncovered balconies, decks, patios, walls or railings to a height of four (4) feet above the pad elevation may project a maximum of eleven (11) feet into the view side setback of a maximum of eight (8) feet beyond the top of slope adjacent to the unit, only on approximately 20% of the lots as indicated on the Setback Map. Each balcony, deck, patio, wall or railing shall be selected from one of three standard designs submitted by the developer and shall in each case be subject to the approval of the Modification Committee.

SECTION V. COMMUNITY RECREATIONAL FACILITIES

The following regulations apply to the development of private community recreational facilities. Prior to the issuance of a building permit, plot plans, elevations and any other such documents deemed necessary by the Community Development Director shall be subject to the review and approval of the Community Development Director.

A. Permitted Uses

The following uses, provided they are in conjunction with private community recreational facilities and not commercial in nature, shall be allowed.

1. Parks, play grounds, tennis courts, pool, recreation or open green areas, riding, hiking and bicycle trails and related facilities.
2. Accessory buildings, structures and uses related and incidental to a permitted use.
3. Signs identifying or giving directions to permitted uses and facilities. No sign shall exceed thirty-five (35) square feet in area.

B. Maximum Building Height

All buildings shall comply with the height restrictions established by the City for the 24/28 foot height limitation district.

C. Setbacks

Twenty-five (25) feet from all residential property lines, and ten (10) feet from any streetside property lines. No structure shall be located closer to a residential structure on an adjacent site than a distance

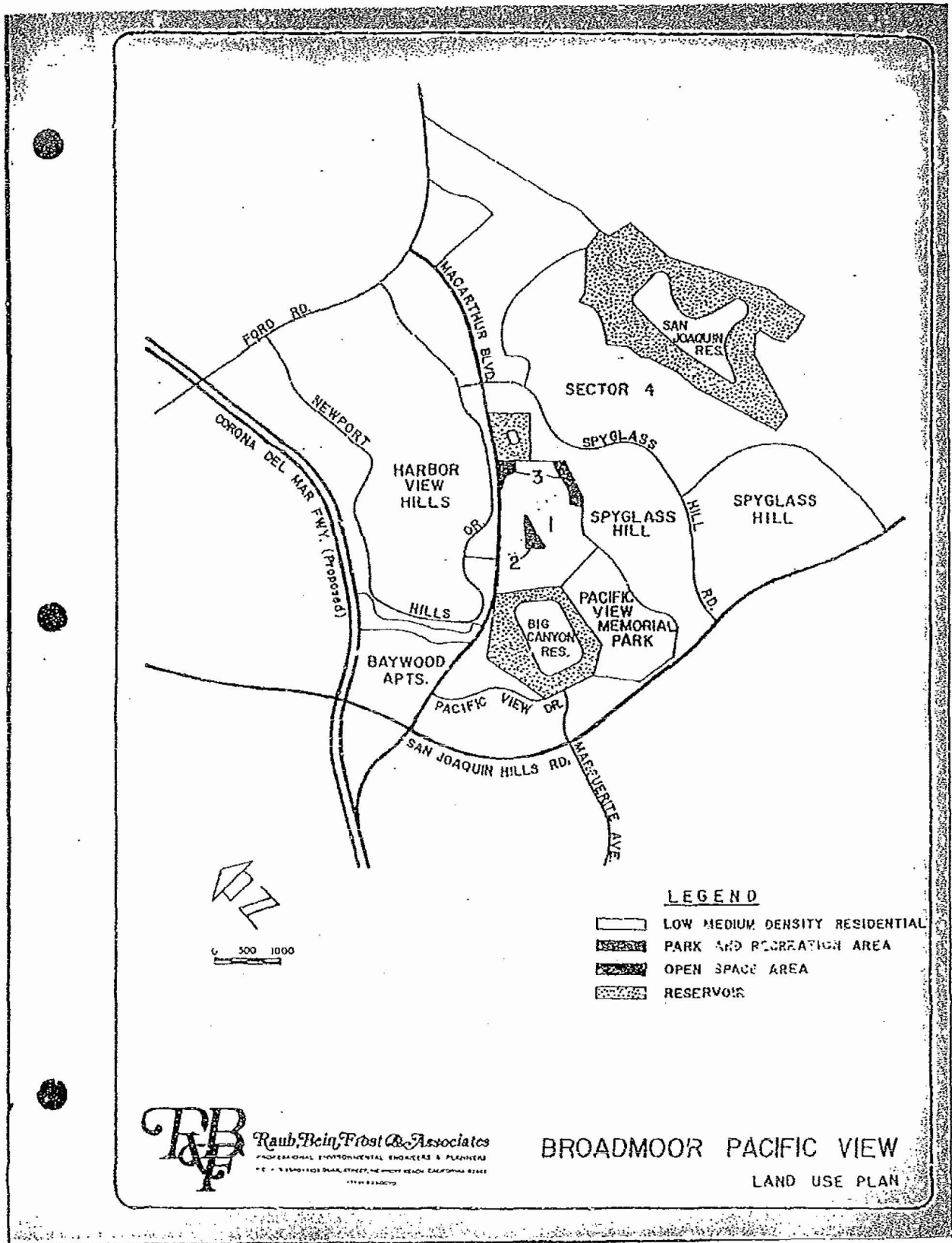
equal to twice the height of the non-residential building. The height of the non-residential structure above the grade elevation of the residential site shall apply. Structures which abut a park, greenbelt or other permanent open space may abut the common property lines.

D. Landscaping

A minimum of ten (10) feet (depth) of continuous landscaping shall be maintained adjacent to all street or highway rights-of-way in the community recreational facilities area, except for perpendicular access driveways and pedestrian walkways. Landscaping shall not exceed thirty (30) inches in height within ten (10) feet of an intersection or access drive.

E. Parking

Parking for twelve (12) vehicles shall be provided within the Community Recreational Facilities area. Location of said parking is subject to review of the Community Development Director. The Community Development Director shall review said facilities and require the amount of offstreet parking deemed appropriate, relative to the intended use and activities of such facilities.



**Raub, Bein, Frost & Associates**  
PROFESSIONAL ENVIRONMENTAL ENGINEERS & PLANNERS  
P.O. BOX 100000, SAN DIEGO, CALIFORNIA 92110

## EXHIBIT 6





**Jamie and Pat White**

**From:** Murillo, Jaime [JMurillo@newportbeachca.gov]

**Sent:** Thursday, September 09, 2010 12:01 PM

**To:** Jamie and Pat White

**Subject:** RE: The Broadmoor Pacific ViewPC (Panned Community) District Amendment No. 18

Jamie,

It was a pleasure meeting with you today. As we discussed, the Broadmoor Pacific View PC sets forth the development standards for a new development in your community. With regard to side yard setbacks, the PC is extremely flexibility and doesn't have a minimum side yard setback requirement, with the exception that buildings must maintain a minimum 10-foot separation.

The Building Code does not specify required setbacks, but rather regulates the type of construction and allowances for opening depending on how close the structure is to the property line. I would advise you to speak with a Building Department Engineer for further details on the Building Code.

With regard to your CC&R's, the City does not regulate or enforce CC&R's and we are not a party to the HOA easements.

I hope this information is helpful.

Thanks,  
Jaime

JAIME MURILLO  
ASSOCIATE PLANNER  
CITY OF NEWPORT BEACH  
P (949) 644-3209  
F (949) 644-3229  
JMURILLO@NEWPORTBEACHCA.GOV

**From:** Jamie and Pat White [mailto:p2jwhite@cox.net]

**Sent:** Wednesday, September 08, 2010 2:24 PM

**To:** Murillo, Jaime

**Subject:** The Broadmoor Pacific ViewPC (Panned Community) District Amendment No. 18

Mr. Murillo, I would appreciate your comments regarding the above cited PC. This email will delineate my questions which I would like to review with you tomorrow in our 10:00 AM meeting. The reason for my request is that our neighbor, Mr. McConaughy, is proposing a room addition to which we are opposed for reasons regarding side yard setback and blocking of view. Therefore: 1. In Section II. General a paragraph is entitled Uniform Building Code and indicates that all construction within this PC shall comply with UBC as adopted by the City of NB. With respect to side yard setbacks I would like to understand if the UBC sets any side yard setback standards in a residential neighborhood. 2. In Section IV. Low Density Residential paragraph E. Setbacks from Property Lines, the only reference to side yard setback is where it talks about a zero side yard setback between the structure and the lot line on one side provided that there are no openings on the zero side yard wall and that a total of ten (10) feet shall be provided between structures. This is very inconsistent with the development because every house in this development originally had a door in the side of the house which is referred to as the zero lot line

9/9/2010

59

side. In fact there is no zero lot line in this development. Please refer to the Broadmoor Seaview Plot Plan PC 1177 and 78 sheet 1. All the sited homes on this sheet and all the other sheets show the property line at a minimum of four feet away from the house on what I refer to the zero side of the house, that being the side where the only opening is a door the purpose of which was to provide fire egress from an atrium which is typical in each house.

The Supplementary Declaration of Covenants, Conditions and Restrictions grant to each house next to another house a 4 foot easement for the purpose of landscaping. Thus the PC has no clear definition of what the setback is allowed to be on the other side of the house. All this brings us to the question of who has the authority and responsibility to establish the setback from the lot line on the other side of a house from the "zero side", understanding that in fact there is no zero side.

I hope this email allows you to prepare for our meeting tomorrow. Thank you.

James White

9/9/2010

60

## EXHIBIT 7







## EXHIBIT 8





James and Patricia White  
2003 Yacht Mischief  
Newport Beach, CA 92660  
(949) 759-1434

Date: October 26, 2010

To: City of Newport Beach Planning Department, Mr. Patrick Alford, Planning Manager

Re: The Broadmoor Pacific View PC (Planned Community) District Amendment No. 18

Dear Mr. Alford,

Thank you for taking the time to discuss the Seaview documents with us last Friday. We appreciate your input. This letter is to ask for clarification and confirmation of our interpretation of "The Broadmoor Pacific View PC (Planned Community) District Amendment No. 18, adopted by the City Council on July 18, 1975, referred to in this letter as the PC. If you find a difference to our interpretation, which is stated in the final paragraph to this letter, please provide the documents that support your position. I have understood that if we do not agree with the opinion of your staff we may request a full Planning Commission hearing. I will refer in this letter to our community as Seaview. I wish to emphasize, our goal is to find the facts as they may be determined by whatever documents that exist. This should certainly be able to be accomplished with the assistance of RBF Consultants, the successor to the engineering company of Raub, Bein, Frost and Associates, that prepared the documents and your staff. It will be helpful to refer to both the Plot Plan dated 1-3-77 and the PC as you read through this letter.

The Declaration of Covenants, Conditions and Restriction for Broadmoor Sea View made September 13, 1976 and recorded in the county records on September 14, 1976 are referred to in this letter as the "CC & R's". Article VII of the CC & R's, states that any changes of various kinds in Seaview, "shall not be inconsistent with those certain Planned Community District Regulations, Broadmoor Pacific View, City of Newport Beach, California prepared by Raub, Bein, Frost and Associates, dated October 23, 1975, revised and approved January 12, 1976", thereby creating the zoning standards and regulations by which future improvements to Seaview may be made. The Planned Community District Regulations referred to in the CC & R's is, I believe, an amendment to the original PC.

The issues that we are trying to clarify are setbacks and rights to views. I understand that the City does not get into view issues and, therefore, it will be satisfactory that you only address the setback issue. The PC discusses setbacks in Section IV, Subsections D and E. There is some additional information in Subsection F that may be relevant to our request. Our review of the PC is as follows:

1. **Subsection D. Setbacks for Streets.** This subsection specifies the setbacks from streets. It also includes as the final paragraph the following: "Prior to the issuance of building permits for each phase of the project, a final setback map shall be submitted to the Community Development Director indicating the setbacks to all building areas proposed in the

development". Use of the words "building areas" in the quoted sentence above indicates to me that there is a map showing the building envelope into which a building may be built or possibly a site or plot plan showing the actual footprint of each home. In fact there is such a map and it is entitled, Broadmoor Seaview Plot Plan for Tract No. 9047, dated 1-3-77, and referred to in this letter as the Plot Plan. This is certainly the map that Broadmoor submitted to the city prior to the issuance of building permits and it shows the setbacks for each house from all the property lines. In the absence of any other map showing the "building areas", one must conclude that this Plot Plan for Seaview, dated 1-3-77 is the Plot Plan for the Phase in which our home is built and is the map referred to in the above quoted sentence that was required to be submitted before the issuance of building permits.

**Subsection E. Setbacks from Property Lines.** Subsection E begins with the sentence, "All setbacks listed under this subsection refer to all property lines not affected by Subsection D above". Since Subsection D deals only with the setbacks from the street it can be concluded that Subsection E will specify setbacks from all the other property lines. The next sentence, "Dwellings may orient towards the opposite property line in order to take advantage of view conditions" raises the question of what is meant by "the opposite property line." The houses all have a blank side, meaning that there are no windows in the wall of that side of the house; like you would find in a zero lot line development, except Seaview is not a zero lot line development. In fact there is a door on this blank wall to provide fire code egress from bedrooms or an atrium. The property line on this side of each house in Seaview is a minimum of 4 feet away from the blank wall of the house. This is sometimes referred to as the zero side. As you know, the neighbor on the blank wall side of the house has an easement allowing him to landscape the area between the property line and the blank wall of the house. Since it would make no sense to orient the blank side of the house, which has no windows, towards the opposite property line to take advantage of a view, it is conclusive that the opposite property line is that line which is nearest the windows side of the house, thereby affording the house a particular view that was deemed valuable by the original developer. This opposite property line occurs between two houses that face each. Refer to the Plot Plan for additional clarity. Notice the zero or blank wall side verses the window side of the house, and again the window side of the house is the side in closest proximity to what is called the opposite property line. All the property lines around a house are addressed directly in Subsection E. except the setback from the opposite property line. The opposite property line is between two houses that face each other and are at the end of the cul-de-sac. The houses were oriented on the lot to take advantage of a view and each lot and its related house are unique as to the view and floor plan and therefore it would have been impractical to assign a one size fits all setback distance. Rather these setbacks are delineated on the approved site plan that was required to be submitted prior to the issuance of building permits. The paragraph referred to in the paragraph 1 of this letter which starts with the words, "Prior to the issuance of...." indicates that the setbacks to all building areas can be found on a final setback map. The only map which shows setbacks to all property lines is the Plot Plan. So it must be concluded that the setback from the opposite property line can only be found on the Plot Plan because of the unique character and view of each of these lots. If one were to purchase a house that had a view and where most houses were 10 feet apart and a particular lot at the end of the cul-de-sac had a lot of open space between the houses because the houses had been oriented to take advantage of a view across their common property line; where

would one find the definitive protection of the open space and the view afforded by the orientation of the house on the lot and it's specific setback from the opposite property line? That assurance can only be found on the Plot Plan and the Plot Plan is the only map known to exist that specifies all the property line setbacks for each particular lot.

Subsection E goes on to describe "Rear or Front Yard" setbacks. Most of the houses in Seaview, as can be seen from the Plot Plan have garages which orient towards to street. When the house is built on top of a slope, the yard at the end of the house opposite from the street is called the view side and therefore the view side property line. When the house is built at the bottom of a slope that same yard is called the rear yard and therefore the property line is called the rear property line. Subsection E clearly specifies the building setbacks required from the top and toe of the slopes for these view and rear yards.

The next item is Side Yard. In this paragraph is discussed a side yard setback of zero with the stipulation that the buildings be 10 feet apart. Since there is no circumstance in Seaview where the property line is in the same place as the blank side building wall, it is hard to see what this paragraph means except that buildings must be 10 feet apart. In fact all the houses in Seaview have a setback from this side yard property line that is a minimum of 4 feet.

**2. Subsection F. Fences, Hedges, and Walls.** This subsection specifies that fences can only be 3 feet high in the view side setback. This substantiates the theory that views are protected across a common property line with the neighboring house.

In conclusion the PC clearly states that the setbacks from all property lines are contained in the PC document and an approved site plan. Since the Plot Plan is the only known document that delineates the setbacks from all the property lines it must be concluded that it is the map referred to in the PC. I look forward to your official written opinion of the setbacks from property lines that are described in the PC. Thank you for your assistance in this matter.

Sincerely,



James and Patricia White



## EXHIBIT 9





# CITY OF NEWPORT BEACH

## PLANNING DEPARTMENT

November 2, 2010

James White  
2003 Yacht Mischief  
Newport Beach, CA 92660

**RE: Interpretation of Broadmoor Pacific View PC Text Setback Regulations**

Dear Mr. White,

In response to your letter dated October 26, 2010, I have investigated the issue of the establishment of setbacks in the Broadmoor Pacific View Planned Community. At issue is whether setbacks were established by an "approved site plan" referenced in Section IV, Subsection E of the PC text remains in effect. More specifically, is whether the side setbacks were established by this site plan and remain in effect.

After reviewing the project files, I have concluded that only the front and rear were established by a setback map. I have based this conclusion on the following facts:

- A Planning Commission staff report dated December 4, 1975, states that "[i]nstead of establishing traditional front and rear setbacks, the applicant is proposing to establish street-side setbacks and view-side setbacks. The applicant has prepared a specific setback plan which will establish these setbacks for each lot." There is no mention of side setbacks.
- The setback map was approved by the then-Community Development Director as provided for in Section IV, Subsection D of the PC text, only front and rear setbacks were identified (see attached).

Based on this information, I can only conclude that the "street and view side setbacks" in Section IV, Subsection E refer to the front and rear setbacks, respectively, and not the side setbacks.

Please feel free to contact me at 949-644-3225 or [PALford@newportbeachca.gov](mailto:PALford@newportbeachca.gov) if you have any questions.

Sincerely,

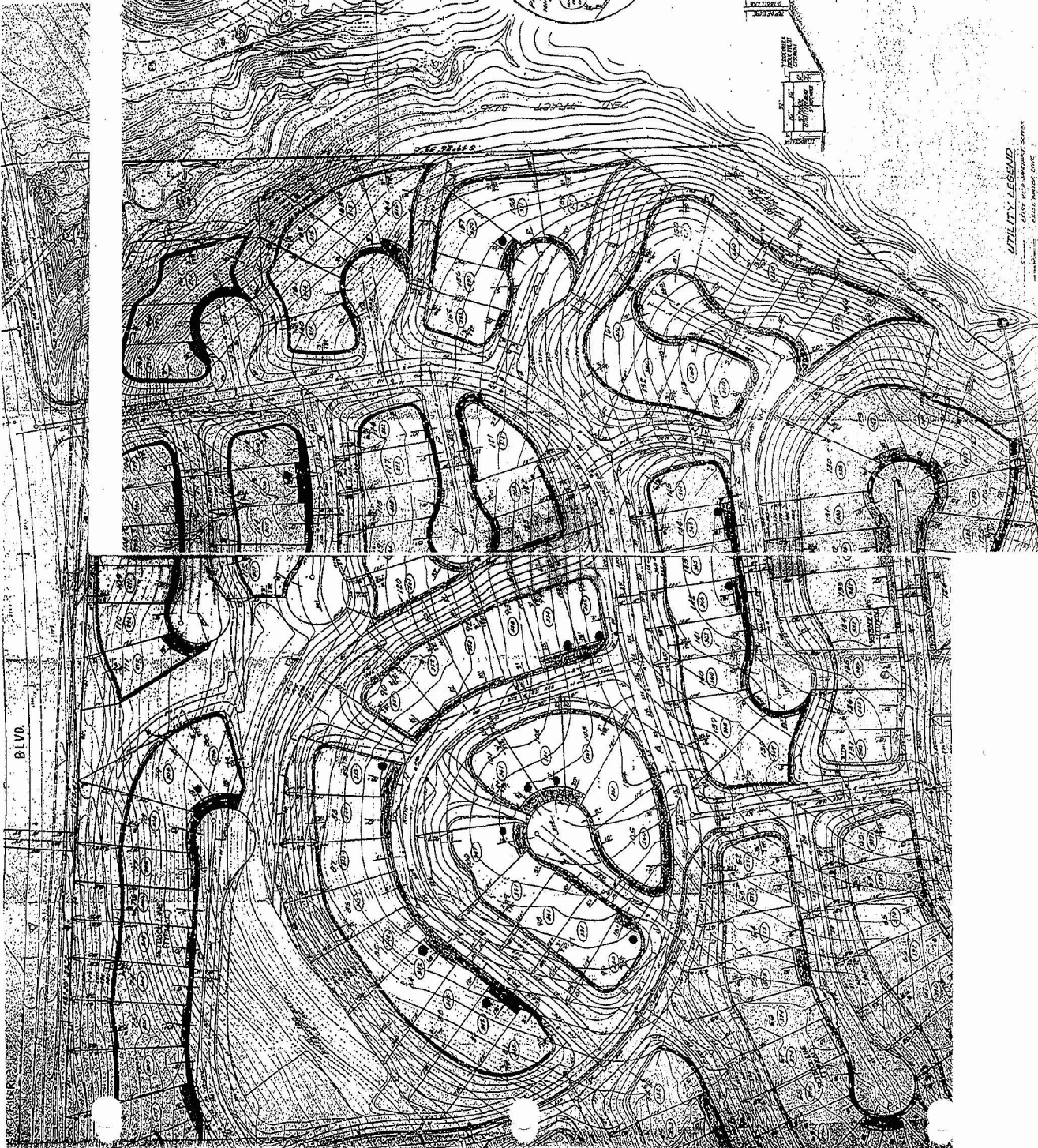
Patrick J. Alford  
Planning Manager





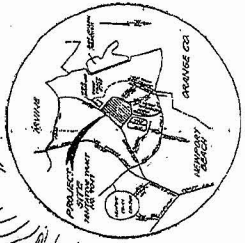
## EXHIBIT 10





BLVD.

AND  
RESERVOIR  
C.R. 102-381



VICINITY MAP

OVERSEEN FOR  
BROADMOOR HOMES  
100% DEVELOPMENT

TYPICAL SECTION A-A

# Setback Map TRACT 9047

100% DEVELOPMENT  
IN THE CITY OF NEWPORT-BEACH, COUNTY OF ORANGE,  
STATE OF CALIFORNIA

UTILITY LEGEND  
EXIST. UTILITIES SHOWN  
PROPOSED UTILITIES SHOWN  
WATER MAINS  
SEWER MAINS  
GAS MAINS  
ELECTRIC MAINS  
TELEPHONE MAINS  
CABLE MAINS

PREPARED BY



## EXHIBIT 11











## EXHIBIT 12



PC 1132433-76

pg 3 of 55

Mr. Alford,

Please look at the microfisk PC 1132433-76  
pg 3 of 55. It shows houses @ lots 30, 29 eight  
feet apart, houses @ lots 27 & 26, eight feet  
apart and houses @ lots 22 & 21, eight feet  
apart. So there must be an amendment to  
PC No. 18 that modified the separation  
between houses. Please call me at your  
convenience. This does change some things;  
I need your input really soon. I did not  
review the whole tract (all of Seaview, but  
I am told there are alot more houses  
eight feet apart. Thanks for your help.

John K. White



## EXHIBIT 13



MODIFICATION APPLICATION  
CITY OF NEWPORT BEACH

No. 1055  
Application Rec'd by WCC  
Fee: 57.00 RECEIVED  
APR 16 2011  
PROPERTY DIVISION

Department of Community Development  
Zoning and Ordinance Administration Division  
Phone (714) 673-2110

Applicant (print) BEACHVIEW HOMES INC

Phone 564-4230

Mailing Address 17802 TUSTIN AVE

Property Owner Same

Phone

This request is for Lots 1, 2, 7, 8, 9, 10, 21, 22, 26, 27,  
29, 30, 31, 32, 40, 41, 42, 43 of Tract 9051 and Lots 34, 35,  
44, 45, 60, 61 of Tract 9260; and lots 2, 19, 34, 35, 41, 42, 47, & 48 of Tract 9261  
Address of Property Involved LOTS 34-35, 41-45, 61-64

Tract 9260

request that one lot provide an easement for side  
driveway from the corner and the side yard setbacks  
be reduced to 4' each or less.

Present Use 5' SIDE YARDS

Zone R2

(if too long, attach separate sheet)

OWNER'S AFFIDAVIT

I (We) do depose and say that I am (we are) the owner(s) of the property(ies) involved in this application. I (We) further certify, under penalty of perjury, that the foregoing statements and answers herein contained and the information furnished herein are in all respects true and correct to the best of my (our) knowledge and belief.

Signature(s) SP. L. [Signature]

NOTE: An agent may sign for the owner if written authorization from the record owner is filed with the application.

DO NOT COMPLETE APPLICATION BELOW THIS LINE

Date Filed 7-6-76 Fee Pd. 85.00 Receipt No. 0877

Hearing Date 7-20-76 Publication Date

Filing Date 7-8-76 Mail Date

Modification Committee Action Opp. [Signature]

Date 7-20-76 Appeal

P. C. Hearing P. C. Action

Date Appeal

P. C. Hearing C. C. Action

Date

M-1055





## EXHIBIT 14





# CITY OF NEWPORT BEACH

CALIFORNIA

City Hall  
3300 W. Newport Blvd.  
Area Code 714  
673-2110

## Modifications Committee Findings and Action

Application No. 1055

Applicant Broadmoor Homes, Inc.

Address of Property Involved Broadmoor Pacific View

### Legal Description

Modification Requested to permit an 8 foot separation between certain units (where the P-C Text requires a 10 foot separation). This request is for Lots 1, 2, 7, 8, 9, 10, 21, 22, 26, 27, 29, 30, 31, 32, 40, 41,

42, 43 of Tract 9047; and Lots 34, 35, 44, 45, 60, 61 of Tract 9260;

and Lots 2, 3, 18, 19, 34, 35, 41, 42, 47, 48 of Tract 9261.

The Modifications Committee on July 20, 1976 approved the subject application upon the following conditions:

1. That development shall be in substantial conformance with the approved plot plans.

The Modifications Committee determined in this case that the proposal would not be detrimental to persons, property or improvements in the neighborhood and that the modification as approved would be consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code for the following reasons: 1. The proposed development is in general conformance with the Planned Community Development Standards for "Bonds or Pacific View." 2. The proposed separation between structures will occur only at the ends of streets or cul-de-sacs where the end dwelling units will be reversed so as to eliminate blank walls along the exterior side yards on the subject lots. 3. The proposed development is a better site solution than originally planned, since more open space will be provided at the ends of streets & cul-de-sacs. NOTE: This approval expires in 6 months if not used. If you require an extension, it must be received prior to the expiration date.

The decision of the Committee may be appealed to the Planning Commission within 7 days of the date of the decision. Any appeal filed shall be accompanied by a filing fee of \$100.00. No building permits may be issued until the appeal period has expired.

MODIFICATIONS COMMITTEE -  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
R. V. HOGAN, DIRECTOR

By William R. Laycock  
William R. Laycock  
Senior Planner

NOTE: The above Application Number must be affixed to the plans when being submitted to the Building Division for plan check and/or permits.

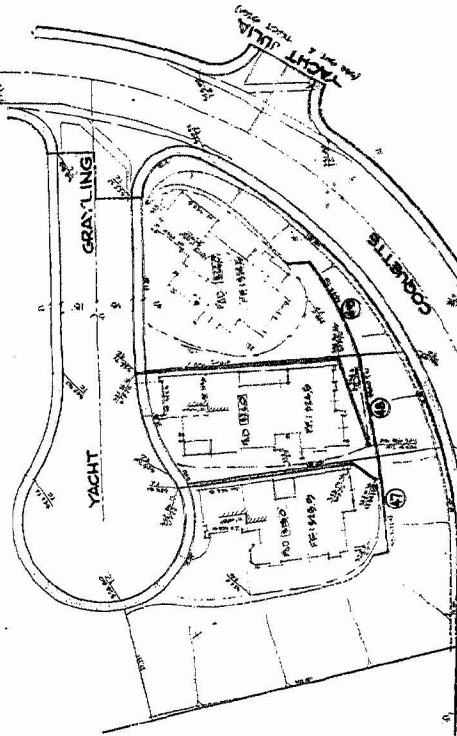


## EXHIBIT 15

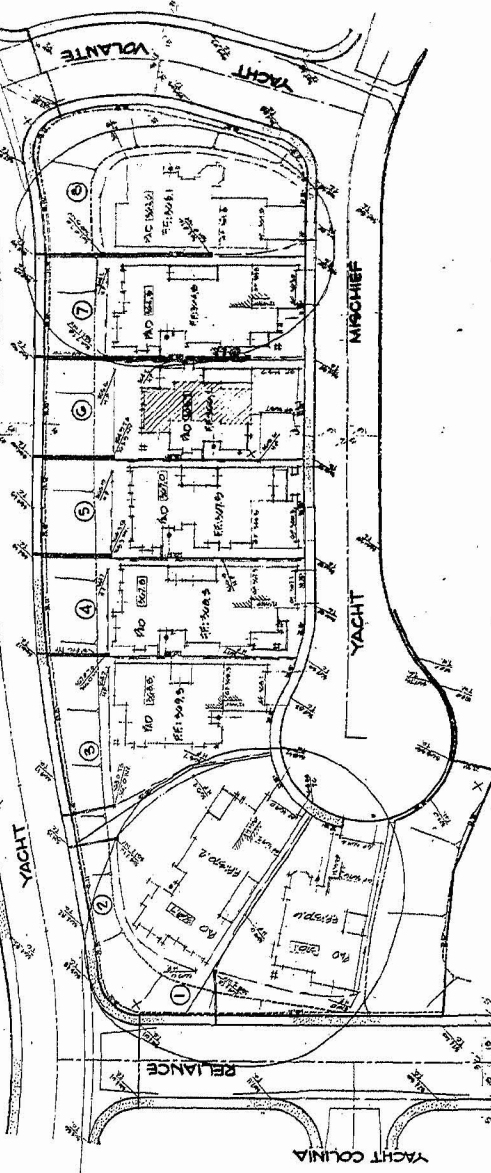


SEE SHEET No 4

SEE



(SEE PART 2, TRACT 1000)  
YACHT DEFENDER



SEE SHEET No 2

SEE

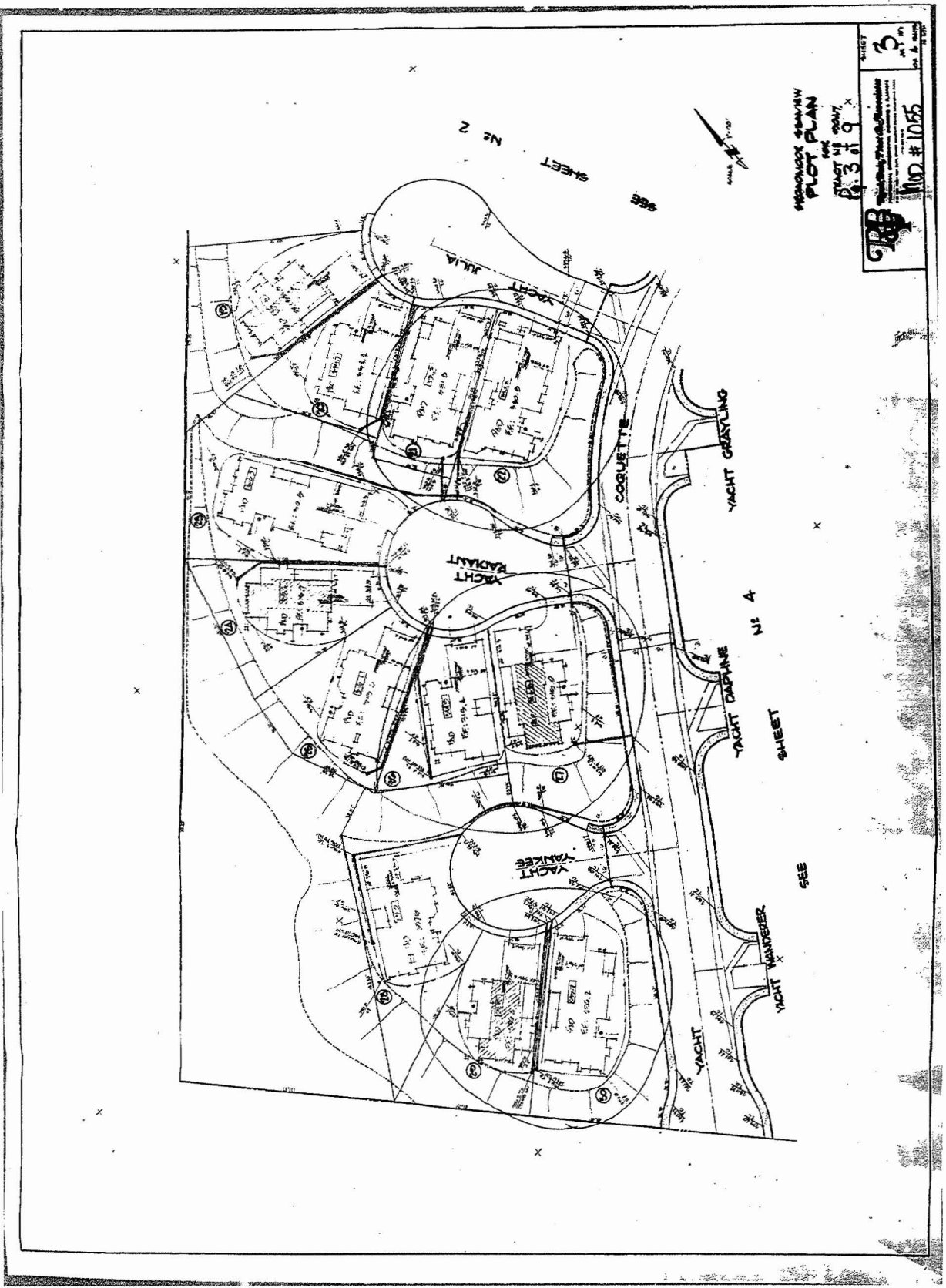


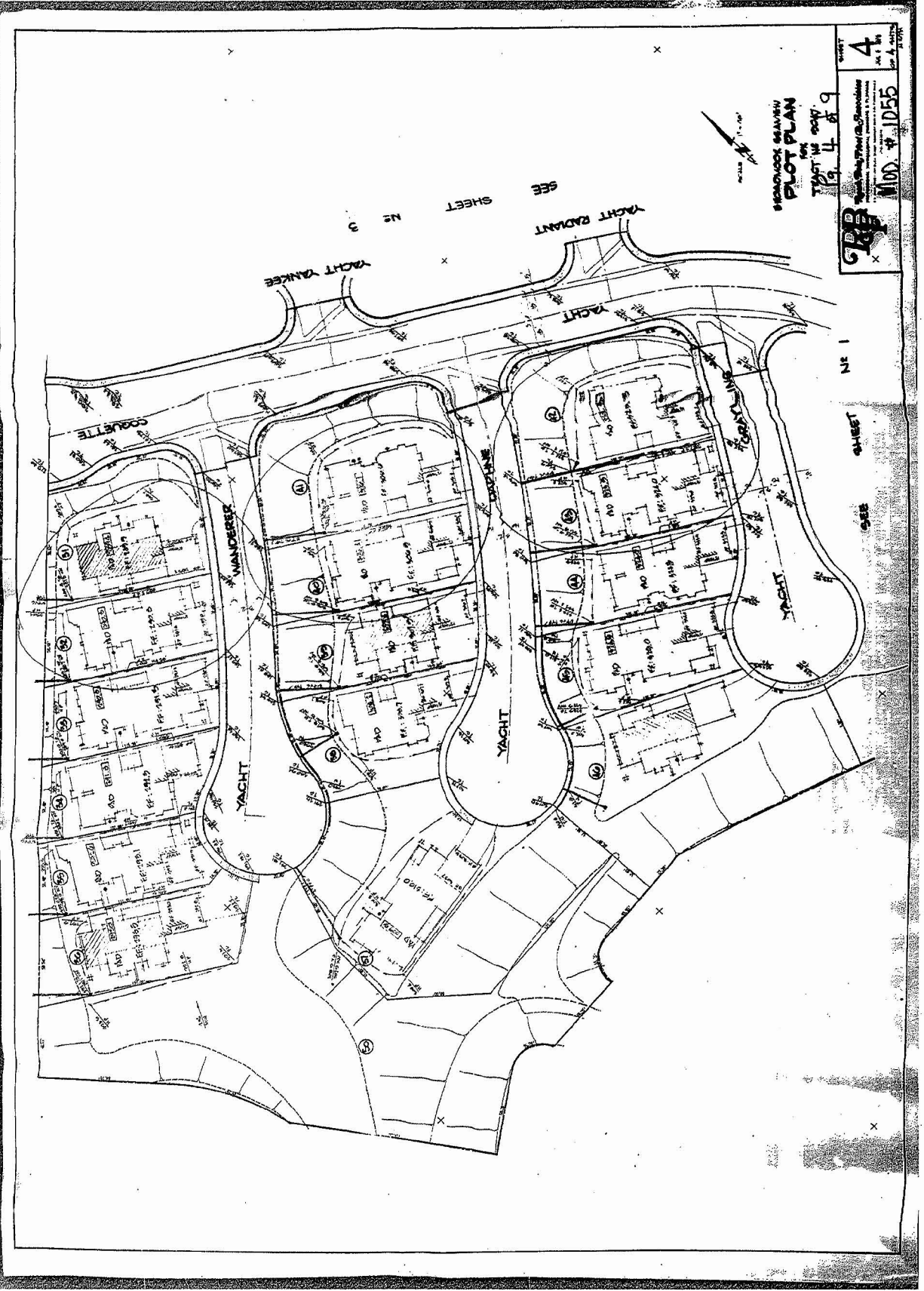
RESEARCH GRAPHIC  
PLOT PLAN  
TRACT No 9

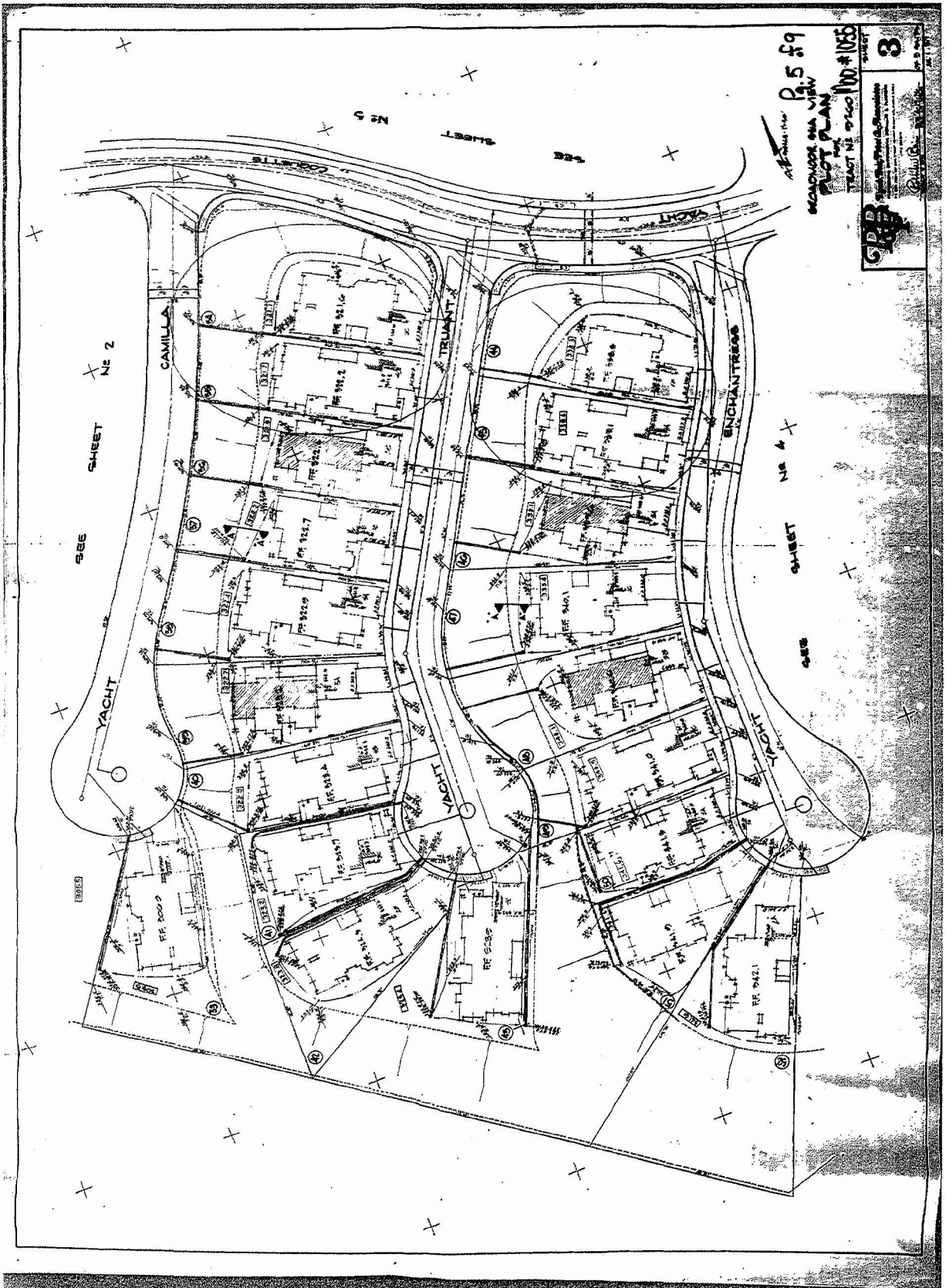
NO. 055  
1

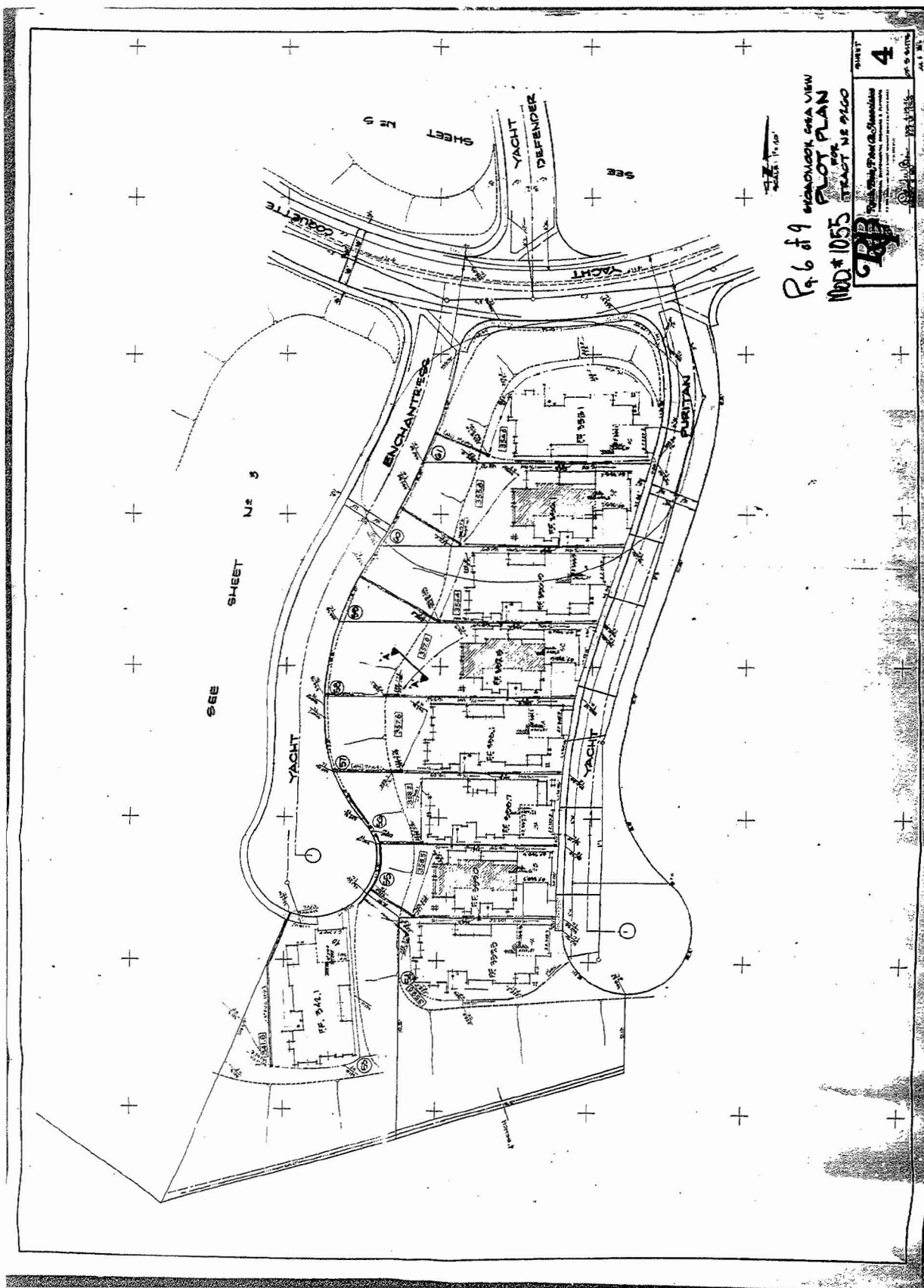






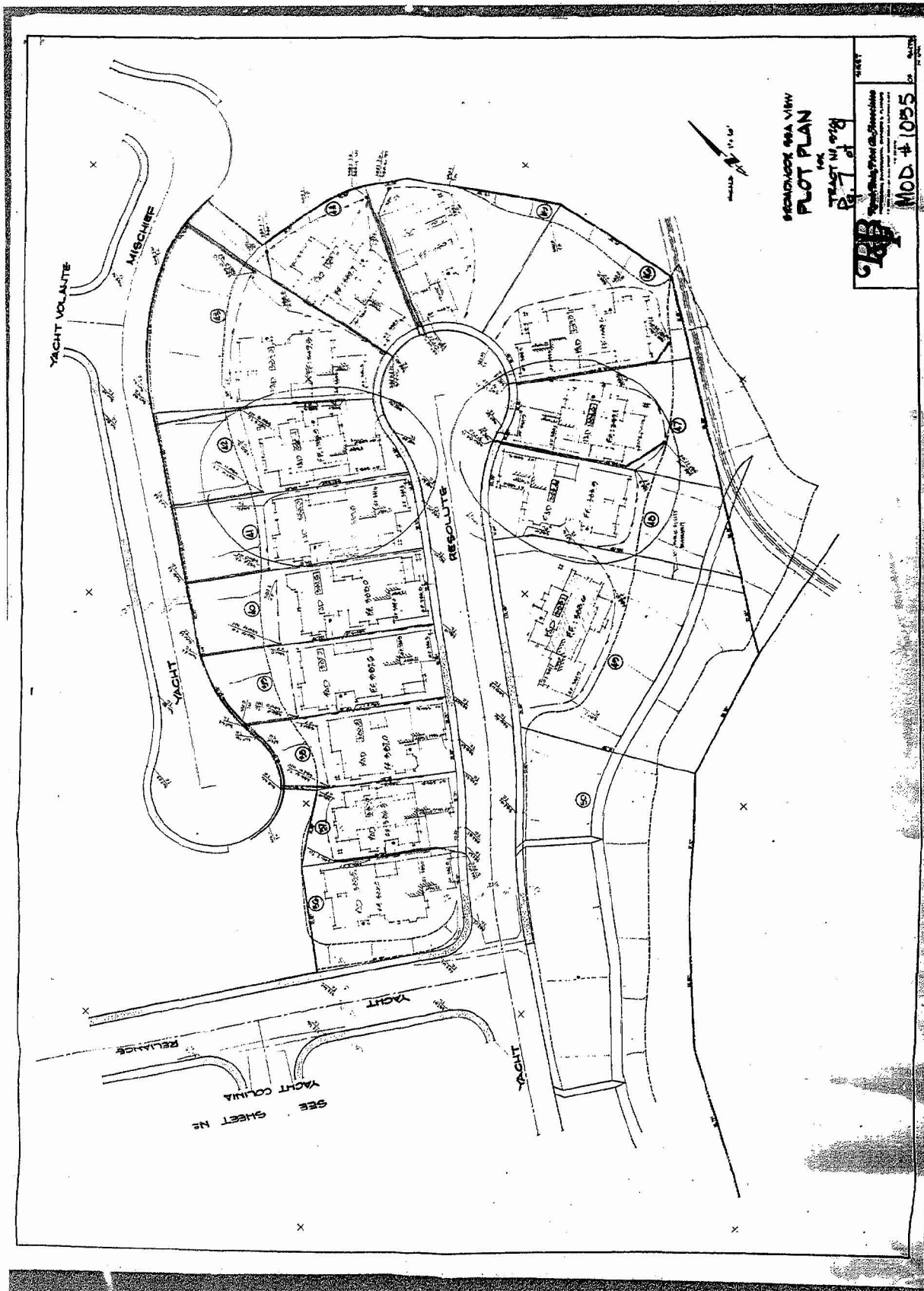






P. 6 of 9  
 WINDWARD SEA VIEW  
 PLOT PLAN  
 MOD # 1055  
 TRACT N: 9100

**CRP**  
 Coastal Resource Planning  
 1000 S. Kalia Rd., Suite 100  
 Honolulu, HI 96813  
 (808) 551-1234  
 FAX (808) 551-1235  
 E-MAIL: CRP@CRP.HI.EDU  
 WWW: WWW.CRPHI.EDU

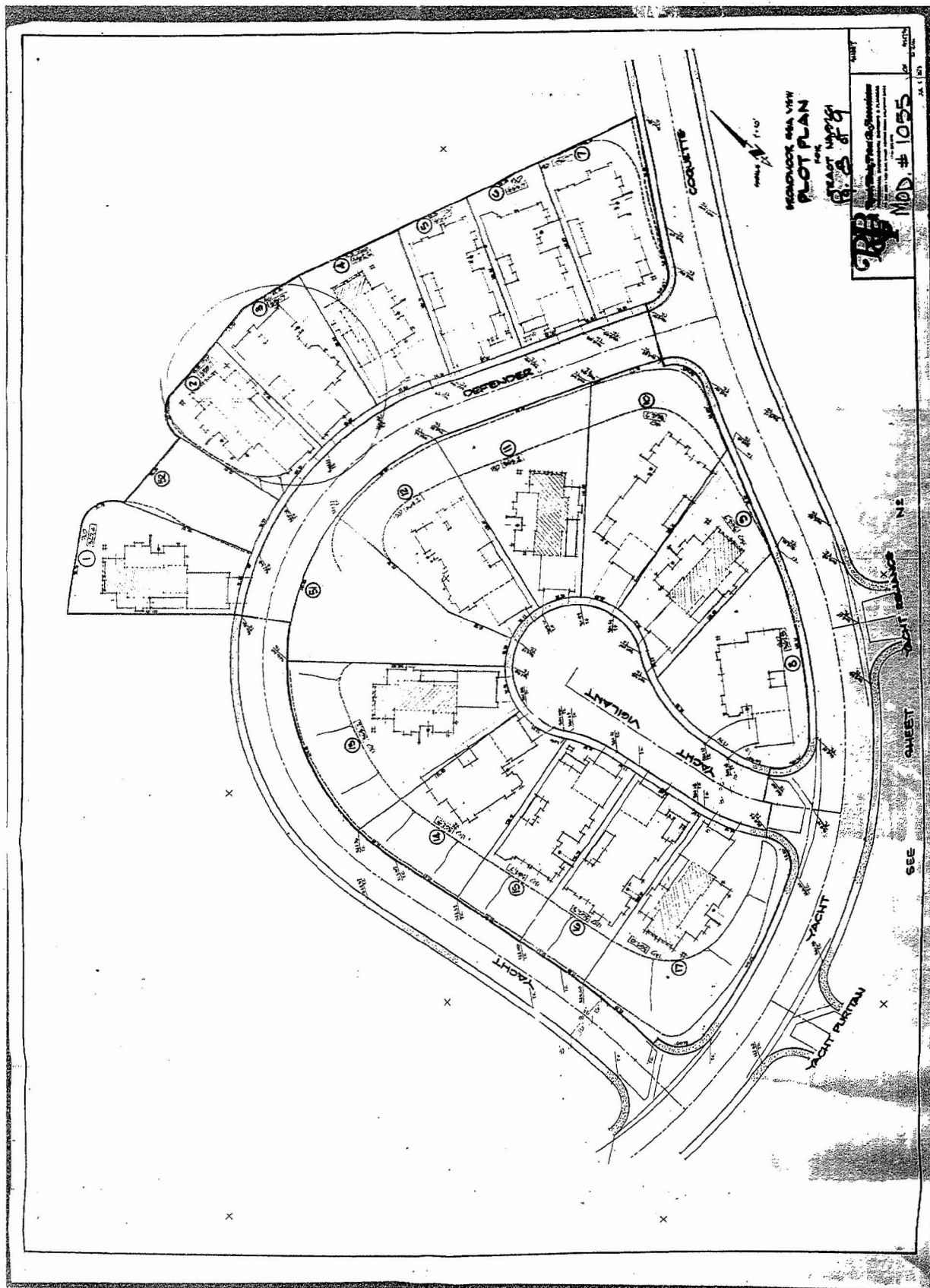


PROPOSED NEW VIEW  
PLOT PLAN

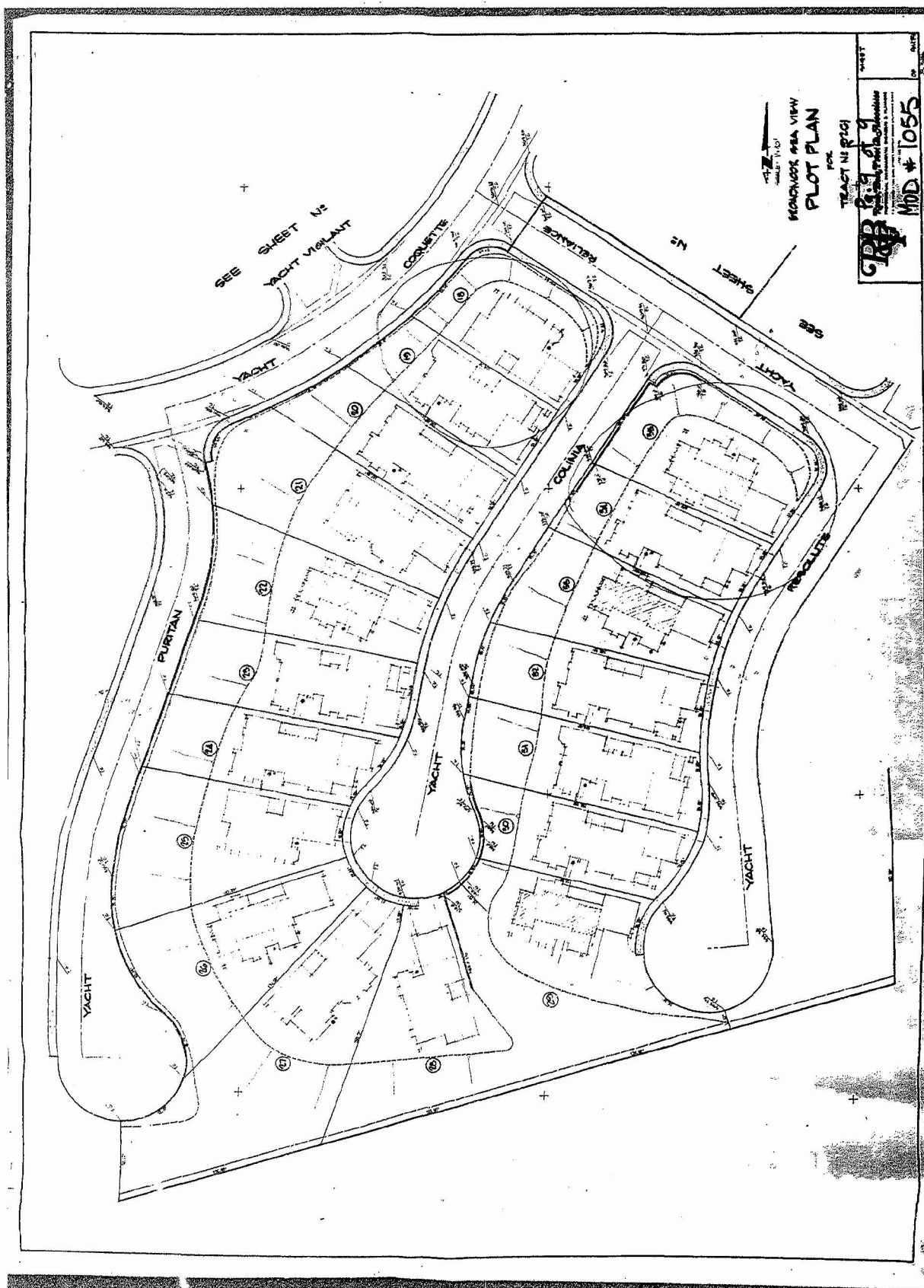
TRUST NO. 1018  
Pg. 7 of 8

	MOD. # 1035
--	-------------





HEADQUARTERS AREA VIEW  
PLOT PLAN  
TRACT 1004  
MOD # 1025







## EXHIBIT 16





## CITY OF NEWPORT BEACH

### PLANNING DEPARTMENT

November 9, 2010

James White  
2003 Yacht Mischief  
Newport Beach, CA 92660

**RE: Broadmoor Pacific View PC Text Side Setback Regulations**

Dear Mr. White,

At our meeting on Thursday, November 4, 2010, you requested a formal interpretation of the side setback required by Section IV, Subsection E of the Broadmoor Pacific View Planned Community (PC) text. Specifically, you wanted to know what the minimum side setback is from the side property line opposite the zero side setback property line. Upon further review of the PC text, I have concluded that the side setback could be zero (0) feet, provided a minimum of ten (10) feet is provided between structures. I know this is not the answer that you wanted to hear. However, in regards to side yards, Section IV, Subsection E of the PC text states:

Side Yard

A zero side yard setback between the structure and the lot line shall be permitted on one side provided there are no openings on the zero side yard wall and that a total of ten (10) feet shall be provided between structures.

Development in Broadmoor Pacific View is permitted a 0-foot side setback as long as a minimum of ten (10) feet is maintained between structures. Beyond that, the PC text is silent in regards to side setbacks. Therefore, I do not have the authority to impose additional setback requirements.

Please feel free to contact me at 949-644-3210 or [JCampbell@newportbeachca.gov](mailto:JCampbell@newportbeachca.gov) if you have any questions.

Sincerely,

  
James Campbell  
Acting Planning Director



## EXHIBIT 17



# TRACT No 9260

24648

IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA.

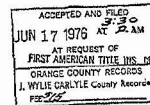
BEING A PORTION OF BLOCKS 82 & 97 OF IRVINE'S SUBDIVISION,  
AS SHOWN ON A MAP RECORDED IN BOOK 1, PAGE 88 OF  
MISCELLANEOUS RECORD MAPS, FRANCHISES OF ORANGE COUNTY,  
CALIFORNIA.

FEBRUARY, 1976

22.043 ACRES

70 LOTS AND LOTS A-J, INCLUSIVE

WILLIAM J. FROST L.S. 3109



WE, THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND COVERED BY THIS MAP, DO HEREBY CONSENT TO THE PREPARATION AND RECORDED OF SAID MAP, AS SHOWN WITHIN THE COLORED BORDER LINE AND WE HEREBY OFFER FOR DEDICATION TO THE CITY OF NEWPORT BEACH AN EASEMENT IN AND OVER LOTS A,B,C,D,E,F,G,H,I AND J AS SHOWN FOR EMERGENCY AND PUBLIC SECURITY INGRESS AND EGRESS AND PUBLIC UTILITY PURPOSES; THE PUBLIC UTILITY EASEMENTS AS SHOWN; THE DOMESTIC WATER DISTRIBUTION SYSTEM AND APPURTENANCES AND THE SEWER COLLECTION SYSTEM AND APPURTENANCES LOCATED WITHIN SAID LETTERED LOTS AND EASEMENTS; ALL VEHICULAR ACCESS RIGHTS TO SAN MIGUEL DRIVE, EXCEPT AT STREET INTERSECTION.

**BROADMOOR HOMES, INC.,**  
a corporation.

*Glenn H. Brengle*  
GLENN H. BRENGLE  
EXECUTIVE VICE PRESIDENT

*S. Reid Gustafson*  
S. REID GUSTAFSON  
VICE PRESIDENT

FIRST AMERICAN TITLE INSURANCE COMPANY,  
A CALIFORNIA CORPORATION, TRUSTEE UNDER DEEDS OF TRUST RECORDED  
IN BOOK 11672, PAGE 1824 OF O.R., AND IN BOOK 11722, PAGE 1633 OF O.R.

*Robert L. Timme*  
ROBERT L. TIMME  
VICE PRESIDENT

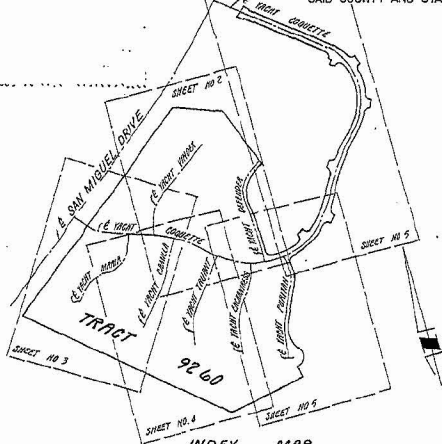
*William J. Frost*  
WILLIAM J. FROST  
ASSISTANT SECRETARY

STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }  
ON THIS 3<sup>rd</sup> DAY OF MARCH, 1976, BEFORE ME, *Joan Irvine*  
A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED  
GLENN H. BRENGLE, KNOWN TO ME TO BE THE EXECUTIVE VICE  
PRESIDENT, AND S. REID GUSTAFSON, KNOWN TO ME TO BE THE  
VICE PRESIDENT, OF BROADMOOR HOMES, INC., A CORPORATION,  
THE CORPORATION THAT EXECUTED THE WITHIN INSTRUMENT AND KNOWN TO ME  
TO BE THE PERSONS WHO EXECUTED THE WITHIN INSTRUMENT ON BEHALF OF  
THE CORPORATION HEREIN NAMED AND ACKNOWLEDGED TO ME THAT SUCH  
CORPORATION EXECUTED THE SAME.

WITNESS MY HAND AND OFFICIAL SEAL:  
MY COMMISSION EXPIRES 9-9-77  
*Joan Irvine*  
NOTARY PUBLIC IN AND FOR  
SAID COUNTY AND STATE.

STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }  
ON THIS 2<sup>nd</sup> DAY OF MAY, 1976, BEFORE ME, *William H. Baum*  
A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED  
ROBERT L. TIMME, KNOWN TO ME TO BE THE VICE  
PRESIDENT, AND GLENN H. BRENGLE, KNOWN TO ME TO BE THE  
EXECUTIVE VICE PRESIDENT, OF FIRST AMERICAN TITLE INSURANCE COMPANY,  
THE CORPORATION THAT EXECUTED THE WITHIN INSTRUMENT AND KNOWN TO ME  
TO BE THE PERSONS WHO EXECUTED THE WITHIN INSTRUMENT ON BEHALF OF  
THE CORPORATION HEREIN NAMED AND ACKNOWLEDGED TO ME THAT SUCH  
CORPORATION EXECUTED THE SAME.

WITNESS MY HAND AND OFFICIAL SEAL:  
MY COMMISSION EXPIRES MAY 14, 1977  
*William H. Baum*  
NOTARY PUBLIC IN AND FOR  
SAID COUNTY AND STATE.



A SCILS REPORT DATED DECEMBER 2, 1975, WAS PREPARED  
BY ALBERT R. KLEIST, R.C.E. 16351.

I, WILLIAM J. FROST, DO HEREBY CERTIFY THAT I AM LICENSED LAND SURVEYOR  
(No. 3109) OF THE STATE OF CALIFORNIA, THAT THIS MAP, CONSISTING OF SIX  
(6) SHEETS, AND THE TRUE AND COMPLETE SURVEY MADE IN FEBRUARY, 1976,  
WHICH IT CORRECTLY REPRESENTS WERE BOTH MADE BY ME OR UNDER MY DIRECT-  
ION; THAT THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS  
INDICATED, OR WILL BE SET IN SUCH POSITIONS WITHIN NINETY DAYS AFTER  
THE ACCEPTANCE OF IMPROVEMENTS; AND THAT SAID MONUMENTS ARE SUFFICIENT  
TO ENABLE THE SURVEY TO BE RETRACED.

*William J. Frost*  
WILLIAM J. FROST, L.S. 3109

I, BENJAMIN B. NOLAN, CITY ENGINEER OF THE CITY OF NEWPORT BEACH,  
ORANGE COUNTY, CALIFORNIA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THIS MAP  
AND HAVE FOUND IT TO BE SUBSTANTIALLY THE SAME AS THE TENTATIVE MAP AS  
FILED WITH, AMENDED AND APPROVED BY THE CITY PLANNING COMMISSION; THAT  
ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND CITY SUBDIVISION REGULATIONS  
HAVE BEEN COMPLIED WITH, AND I AM SATISFIED SAID MAP IS TECHNICALLY  
CORRECT.

DATED THIS 1<sup>st</sup> DAY OF JUNE, 1976.  
*Benjamin B. Nolan*  
BENJAMIN B. NOLAN, CITY ENGINEER R.C.E. 12806

STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }

I, W.E. ST. JOHN, COUNTY CLERK OF ORANGE COUNTY, DO HEREBY CERTIFY TO THE  
COUNTY RECORDER OF SAID COUNTY THAT THE PROVISIONS OF THE SUBDIVISION  
MAP ACT HAVE BEEN COMPLIED WITH REGARDING DEPOSITS TO SECURE PAYMENT  
OF TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES ON THE LAND COVERED  
BY THIS MAP.

DATED THIS 5<sup>th</sup> DAY OF JUNE, 1976.  
W.E. ST. JOHN  
COUNTY CLERK OF ORANGE COUNTY

BY *Liane Reyes*  
DEPUTY

STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }

I, DORIS GEORGE, CITY CLERK OF THE CITY OF NEWPORT BEACH,  
DO HEREBY CERTIFY THAT THIS MAP WAS PRESENTED FOR APPROVAL TO THE CITY  
COUNCIL OF SAID CITY AT A REGULAR MEETING THEREOF HELD ON THE 22<sup>nd</sup>  
DAY OF MARCH, 1976, AND THAT THEREUPON SAID COUNCIL DID BY AN ORDER  
DULY PASSED AND ENTERED APPROVE SAID MAP AND DID ACCEPT ON BEHALF OF  
THE CITY OF NEWPORT BEACH AN EASEMENT IN AND OVER LOTS A,B,C,D,E,F,G,H,I & J FOR  
EMERGENCY AND PUBLIC SECURITY INGRESS AND EGRESS AND PUBLIC UTILITY PURPOSES;  
PUBLIC UTILITY EASEMENTS, THE DOMESTIC WATER DISTRIBUTION SYSTEM AND  
APPURTENANCES; THE SEWER COLLECTION SYSTEM AND APPURTENANCES; AND ALL VEHICULAR  
ACCESS RIGHTS TO SAN MIGUEL DRIVE, AS DEDICATED; AND DID ALSO APPROVE SAID MAP  
PURSUANT TO SECTION 66436(b)(1) OF THE SUBDIVISION MAP ACT.

DATED THIS 1<sup>st</sup> DAY OF JUNE, 1976. BY *Doris George*  
CITY CLERK

STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }

I, ROBERT L. CITRON, COUNTY TAX COLLECTOR-TREASURER OF ORANGE  
COUNTY, DO HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF MY OFFICE THERE  
ARE NO LIENS AGAINST THE LAND SHOWN WITHIN THE COLORED BORDER ON THIS  
MAP OR ANY PART THEREOF FOR UNPAID STATE, COUNTY OR CITY TAXES OR SPECIAL  
ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS  
COLLECTED AS TAXES NOT YET DUE AND PAYABLE.

DATED THIS 3<sup>rd</sup> DAY OF JUNE, 1976.  
ROBERT L. CITRON  
COUNTY TAX COLLECTOR-TREASURER

BY *Robert L. Citron*  
DEPUTY TAX COLLECTOR

EXAMINED AND APPROVED THIS 16<sup>th</sup> DAY OF JUNE, 1976.

C.R. NELSON  
COUNTY SURVEYOR

BY *C.R. Nelson*  
DEPUTY

EXAMINED AND APPROVED BY THE PLANNING COMMISSION OF THE CITY OF  
NEWPORT BEACH THIS 4<sup>th</sup> DAY OF MARCH, 1976.

BY *Richard V. Hogan*  
RICHARD V. HOGAN  
EX-OFFICIO SECRETARY

## SIGNATURE OMISSIONS NOTE

PURSUANT TO THE PROVISIONS OF SECTION 66436(b)(1) OF THE SUBDIVISION  
MAP ACT, THE FOLLOWING SIGNATURES HAVE BEEN OMITTED: THE IRVINE  
COMPANY, HOLDER OF AN AIRSPACE EASEMENT BY DEED RECORDED IN BOOK  
9786, PAGE 827 OF O.R.; AND THE METROPOLITAN WATER DISTRICT OF SOUTHERN  
CALIFORNIA, OWNER OF RIGHT OF WAY FOR EXISTING ROADS BY DEEDS RECORDED  
IN BK. 1211, PG. 317 OF O.R. AND IN BK. 2402, PG. 469 OF O.R.

SEE SHEET 6 FOR BASIS OF BEARINGS, MONUMENT NOTES, BOUNDARY CONTROL  
MAP AND EASEMENT NOTE.

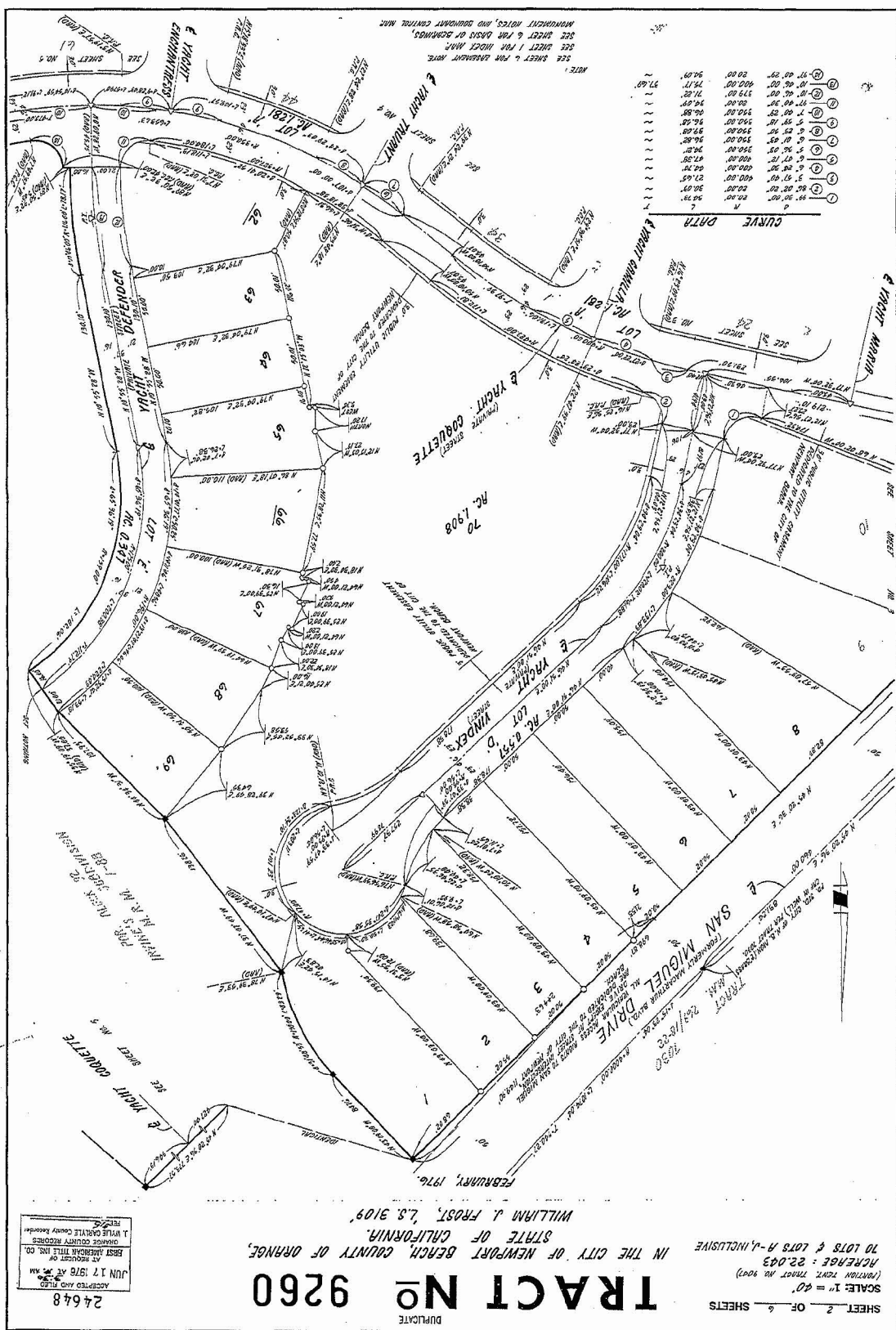
378-32

378 31



TR-9260  
 2 of 6  
 DAY FILM CORP. SANTA CA.

378-33  
 33  
 878.



SHEET 3 OF 6 SHEETS

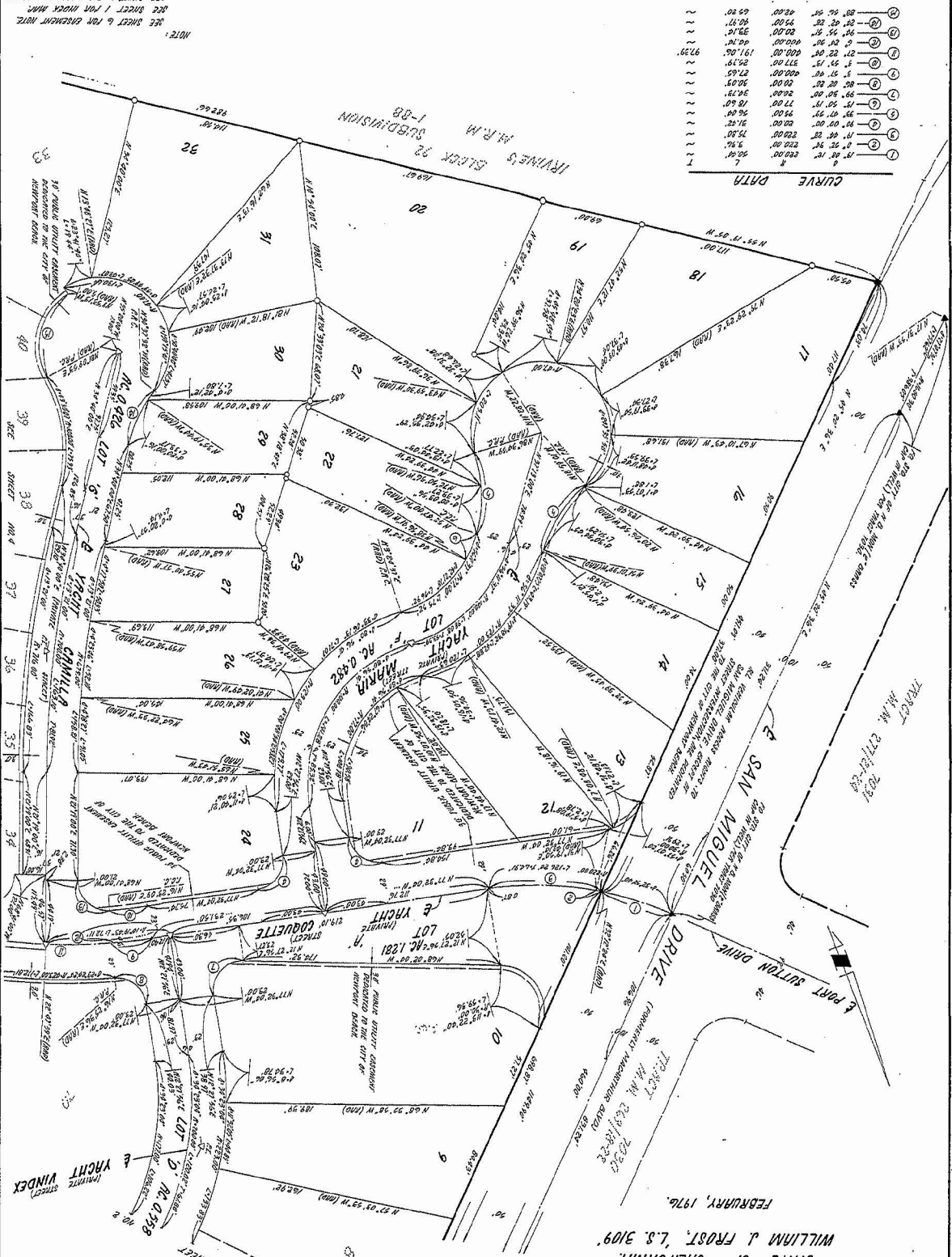
# TRACT No 9260

IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE,  
STATE OF CALIFORNIA.

WILLIAM J. FROST, L.S. 3109.

FEBRUARY, 1976.

24648  
JUN 17 1976  
AT REQUEST OF  
FIRST AMERICAN TITLE INS.  
ORANGE COUNTY RECORDS  
J. WYLE ORANGE COUNTY RECORDER  
PAGE 2



CURVE DATA

STATION	CHORD BEARING	CHORD DIST.	ARC BEARING	ARC DIST.	PI
1	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	1
2	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	2
3	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	3
4	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	4
5	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	5
6	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	6
7	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	7
8	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	8
9	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	9
10	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	10
11	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	11
12	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	12
13	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	13
14	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	14
15	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	15
16	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	16
17	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	17
18	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	18
19	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	19
20	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	20
21	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	21
22	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	22
23	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	23
24	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	24
25	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	25
26	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	26
27	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	27
28	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	28
29	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	29
30	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	30
31	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	31
32	N 89° 18' 18\"	42.00	N 89° 18' 18\"	42.00	32

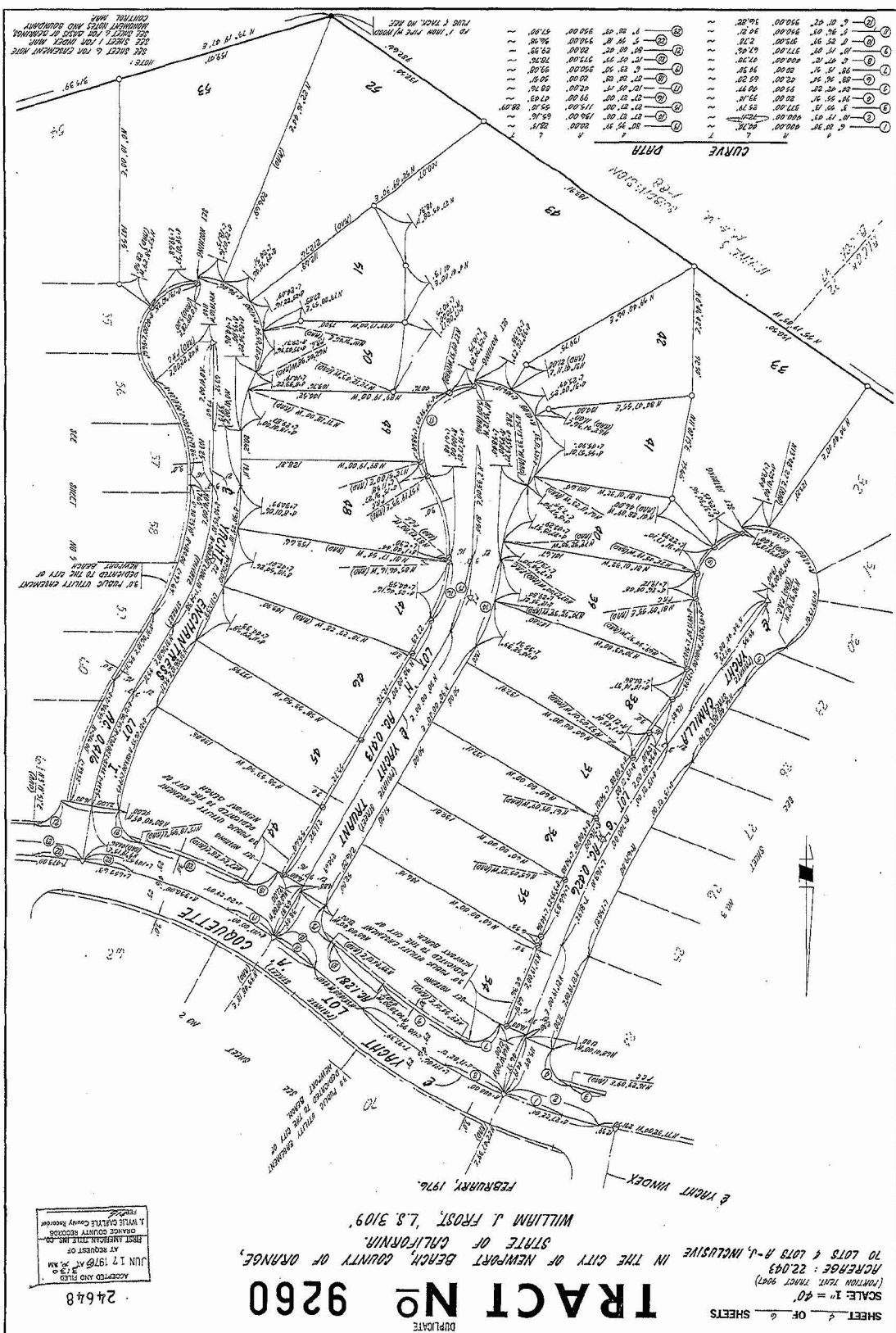
NOTE:  
SEE SHEET 1 FOR ENHANCED NOTE  
SEE SHEET 2 FOR BASIS OF ADJUSTMENTS  
SEE SHEET 3 FOR BASIS OF ADJUSTMENTS  
CONTROL POINT

378-34

826

4 of 6  
TR 9260

378-35



TRACT No 9260

STATE OF CALIFORNIA  
IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE,  
WILLIAM J. FROST, L.S. 3109,  
FEBRUARY 1976.

ACCEPTED AND FILED  
JUN 17 1976  
AT REQUEST OF  
FIRST AVERAGE TITLE INS. CO.  
L. WHITE COUNTY RECORDER  
RECORDED

24648

SHEET 4 OF 6 SHEETS

SCALE: 1" = 40'

ACREAGE: 22.043

70 LOTS & LOTS 1-4, INCLUSIVE

IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE,

STATE OF CALIFORNIA

WILLIAM J. FROST, L.S. 3109,

FEBRUARY 1976.



SHEET 6 OF 6 SHEETS  
(PORTION TRACT 7007)  
ACRERAGE: 22.043  
TO LOTS 8 & LOTS A-J, INCLUSIVE IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA.

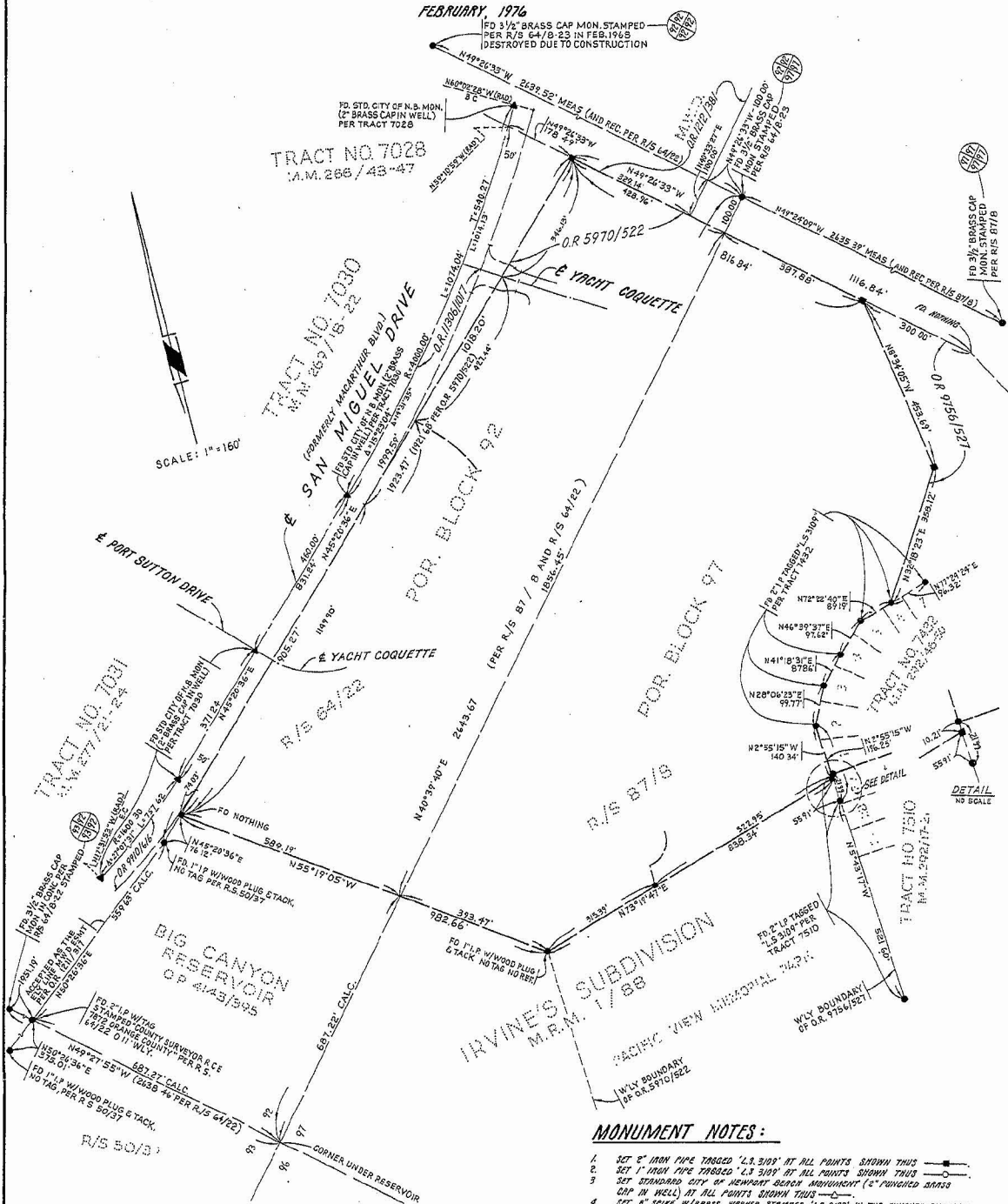
# TRACT NO 9260

DUPLICATE

24648

ACCEPTED AND FILED  
JUN 17 1976  
REQUEST OF  
FIRST AMERICAN TITLE INS. CO.  
ORANGE COUNTY RECORDS  
J. WILLY CARLILE County Recorder  
REC-202

BOUNDARY CONTROL MAP  
WILLIAM J. FROST, L.S. 3109



## MONUMENT NOTES:

1. SET 6" IRON PIPE TANGED 'L.S. 3109' AT ALL POINTS SHOWN THUS
2. SET 1" IRON PIPE TANGED 'L.S. 3109' AT ALL POINTS SHOWN THUS
3. SET STANDARD CITY OF NEWPORT BEACH MONUMENT ('S' PUNCHED DASH CAP IN WELL) AT ALL POINTS SHOWN THUS
4. SET 6" SPINE W/BRASS WHEELS TANGED 'L.S. 3109' IN THE FINISHED SURFACE AT ALL CENTERLINE POINTS OF CONTROL, UNLESS OTHERWISE NOTED.
5. SET LEAD & TRAIL TANGED 'L.S. 3109' IN THE CURB AT ALL POINTS SHOWN THUS
6. UNLESS OTHERWISE NOTED ABOVE, HUMECORD W/ CORNERS WHICH ABOUT A STREET WILL BE MARKED WITH A LEAD & TRAIL TANGED 'L.S. 3109' IN THE CURB OR SIDEWALK ON A 4.5' OFFSET BY PRODUCING THE SIDE LOT LINES AND BY PRODUCING THE RADIAL LINES FOR ALL OTHER LOTS AND LOT CORNERS.
7. FOUND EXISTING MONUMENT AT ALL POINTS SHOWN THUS ON THIS
8. CORRECTION IN AND OPEN LOTS A THRU J FOR EMERGENCY AND PUBLIC SECURITY PURPOSES AND PUBLIC UTILITY PURPOSES DEDICATED TO THE CITY OF NEWPORT BEACH.

NOTE: SEE SHEET 1 FOR INDEX MAP.

## BASIS OF BEARINGS

THE BEARING OF N45°20'36"E ON THE E. OF SAN MIGUEL DRIVE (FORMERLY MACARTHUR BOULEVARD) AS SHOWN ON TRACT NO. 7030, RECORDED IN BOOK 269, PAGES 18 THRU 22 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, WAS TAKEN AS THE BASIS OF BEARINGS FOR THIS MAP.

378-37

878

## EXHIBIT 18



SHEET 1 OF 4 SHEETS  
(FINAL UNIT OF TENT. TRACT NO. 9047)

# TRACT No 9047

29125

IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA.

BEING A PORTION OF BLOCKS 92 & 97 OF IRVINE'S SUBDIVISION, AS SHOWN ON A MAP RECORDED BOOK 1, PAGE 88 OF MISCELLANEOUS RECORD MAPS, AND LOT C AS SHOWN ON A MAP OF TRACT NO. 9260, RECORDED IN BOOK 378, PAGES 32 THROUGH 37 OF MISCELLANEOUS MAPS, BOTH RECORDS OF ORANGE COUNTY, CALIFORNIA

FEBRUARY, 1976

16.129 ACRES

52 LOTS &amp; LOTS A-H INCLUSIVE

WILLIAM J. FROST "L.S. 3109"  
RAUB · BEIN · FROST & ASSOCIATES

WE, THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND COVERED BY THIS MAP, DO HEREBY CONSENT TO THE PREPARATION AND RECORDED OF SAID MAP, AS SHOWN WITHIN THE COLORED BORDER LINE AND WE HEREBY OFFER FOR DEDICATION TO THE CITY OF NEWPORT BEACH AN EASEMENT IN AND OVER LOTS A, B, C, D, E, F, G, H AS SHOWN FOR EMERGENCY AND PUBLIC SECURITY INGRESS AND EGRESS AND PUBLIC UTILITY PURPOSES, THE PUBLIC UTILITY EASEMENTS AS SHOWN; THE DOMESTIC WATER DISTRIBUTION SYSTEM AND APPURTENANCES AND THE SEWER COLLECTION SYSTEM AND APPURTENANCES LOCATED WITHIN SAID LETTERED LOTS AND EASEMENTS.

**BROADMOOR HOMES INC.,**  
a corporation.



*Roland F. Osgood*  
ROLAND F. OSGOOD  
EXECUTIVE VICE PRESIDENT

*S. Reid Gustafson*  
S. REID GUSTAFSON  
VICE PRESIDENT

**FIRST AMERICAN TITLE INSURANCE COMPANY,**  
A CALIFORNIA CORPORATION; TRUSTEE UNDER DEEDS OF TRUST RECORDED IN BOOK 11672, PAGE 1824 OF O.R. AND IN BOOK 11722, PAGE 1633 OF O.R.

*Robert S. Timme*  
ROBERT S. TIMME  
VICE PRESIDENT

*Barbara Smith*  
BARBARA SMITH  
ASSISTANT SECRETARY

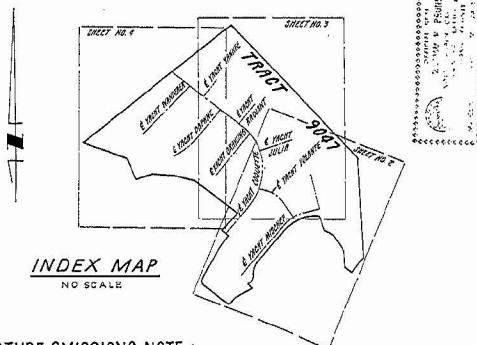
STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }  
ON THIS 9th DAY OF April, 1976, BEFORE ME Jean Irvine,  
A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED  
ROLAND F. OSGOOD, KNOWN TO ME TO BE THE EXECUTIVE VICE  
PRESIDENT, AND S. REID GUSTAFSON, KNOWN TO ME TO BE THE  
VICE PRESIDENT OF BROADMOOR HOMES, INC., A CORPORATION,  
THE CORPORATION THAT EXECUTED THE WITHIN INSTRUMENT AND KNOWN TO ME  
TO BE THE PERSONS WHO EXECUTED THE WITHIN INSTRUMENT ON BEHALF OF  
THE CORPORATION HEREIN NAMED AND ACKNOWLEDGED TO ME THAT SUCH  
CORPORATION EXECUTED THE SAME.

WITNESS MY HAND AND OFFICIAL SEAL: *Jean Irvine*  
MY COMMISSION EXPIRES 8-9-77  
NOTARY PUBLIC IN AND FOR  
SAID COUNTY AND STATE.



STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }  
ON THIS 15th DAY OF May, 1976, BEFORE ME William H. Bauns,  
A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED  
ROBERT S. TIMME, KNOWN TO ME TO BE THE VICE  
PRESIDENT, AND VERN SMITH, KNOWN TO ME TO BE THE  
ASSISTANT SECRETARY OF FIRST AMERICAN TITLE INSURANCE COMPANY,  
THE CORPORATION THAT EXECUTED THE WITHIN INSTRUMENT AND KNOWN TO ME  
TO BE THE PERSONS WHO EXECUTED THE WITHIN INSTRUMENT ON BEHALF OF  
THE CORPORATION HEREIN NAMED AND ACKNOWLEDGED TO ME THAT SUCH  
CORPORATION EXECUTED THE SAME.

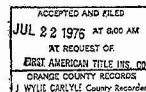
WITNESS MY HAND AND OFFICIAL SEAL: *William H. Bauns*  
MY COMMISSION EXPIRES MAY 24, 1977  
NOTARY PUBLIC IN AND FOR  
SAID COUNTY AND STATE.



## SIGNATURE OMISSIONS NOTE :

PURSUANT TO THE PROVISIONS OF SECTION 64436(b) OF THE SUBDIVISION MAP ACT THE FOLLOWING SIGNATURES HAVE BEEN OMITTED:  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, OWNER OF RIGHT OF WAY FOR EXISTING ROADS BY DEEDS RECORDED IN BK. 121, PG. 517 OF O.R., AND IN BK. 2402, PG. 469 OF O.R.

A SOILS REPORT DATED DECEMBER 2, 1975 WAS PREPARED BY ALBERT R. KLEIST, R.C.E. 16351.



\$11.00

I, WILLIAM J. FROST, DO HEREBY CERTIFY THAT I AM LICENSED LAND SURVEYOR (NO. 3109) OF THE STATE OF CALIFORNIA, THAT THIS MAP, CONSISTING OF FOUR (4) SHEETS, AND THE TRUE AND COMPLETE SURVEY MADE IN FEBRUARY, 1976, WHICH IT CORRECTLY REPRESENTS WERE BOTH MADE BY ME OR UNDER MY DIRECTION; THAT THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR WILL BE SET IN SUCH POSITIONS WITHIN NINETY DAYS AFTER THE ACCEPTANCE OF IMPROVEMENTS; AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

*William J. Frost*  
WILLIAM J. FROST, L.S. 3109

I, BENJAMIN B. NOLAN, CITY ENGINEER OF THE CITY OF NEWPORT BEACH, ORANGE COUNTY, CALIFORNIA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THIS MAP AND HAVE FOUND IT TO BE SUBSTANTIALLY THE SAME AS THE TENTATIVE MAP AS FILED WITH, AMENDED AND APPROVED BY THE CITY PLANNING COMMISSION; THAT THE PROVISIONS OF THE SUBDIVISION MAP ACT AND CITY SUBDIVISION REGULATIONS HAVE BEEN COMPLIED WITH, AND I AM SATISFIED SAID MAP IS TECHNICALLY CORRECT.

DATED THIS 15th DAY OF JULY, 1976.

*Benjamin B. Nolan*  
BENJAMIN B. NOLAN, CITY ENGINEER R.C.E. 12906

STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }

I, W.E. ST. JOHN, COUNTY CLERK OF ORANGE COUNTY, DO HEREBY CERTIFY TO THE COUNTY RECORDER OF SAID COUNTY THAT THE PROVISIONS OF THE SUBDIVISION MAP ACT HAVE BEEN COMPLIED WITH REGARDING DEPOSITS TO SECURE PAYMENT OF TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES ON THE LAND COVERED BY THIS MAP.

DATED THIS 30th DAY OF July, 1976.

W.E. ST. JOHN  
COUNTY CLERK OF ORANGE COUNTY

BY *Deanna Kaye*  
DEPUTY

STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }  
CITY OF NEWPORT BEACH }

I, DORIS GEORGE, CITY CLERK OF THE CITY OF NEWPORT BEACH, DO HEREBY CERTIFY THAT THIS MAP WAS PRESENTED FOR APPROVAL TO THE CITY COUNCIL OF SAID CITY AT A REGULAR MEETING THEREOF HELD ON THE 10th DAY OF MAY, 1976, AND THAT THEREUPON SAID COUNCIL DID BY AN ORDER DULY PASSED AND ENTERED APPROVE SAID MAP AND DID ACCEPT ON THE BEHALF OF THE CITY OF NEWPORT BEACH AN EASEMENT IN AND OVER LOTS A, B, C, D, E, F, G, H FOR EMERGENCY AND PUBLIC SECURITY INGRESS AND EGRESS AND PUBLIC UTILITY PURPOSES; THE PUBLIC UTILITY EASEMENTS; THE DOMESTIC WATER DISTRIBUTION SYSTEM AND APPURTENANCES AND THE SEWER COLLECTION SYSTEM AND APPURTENANCES, AS DEDICATED; AND DID ALSO APPROVE SAID MAP PURSUANT TO THE PROVISIONS OF SECTION 66436(b)(1) OF THE SUBDIVISION MAP ACT.

DATED THIS 10th DAY OF May, 1976. BY *Doris George* CITY CLERK

STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }

I, ROBERT L. CITRON, COUNTY TAX COLLECTOR - TREASURER OF ORANGE COUNTY, DO HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF MY OFFICE THERE ARE NO LIENS AGAINST THE LAND SHOWN WITHIN THE COLORED BORDER ON THIS MAP OR ANY PART THEREOF FOR UNPAID STATE, COUNTY OR CITY TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES NOT YET DUE AND PAYABLE.

DATED THIS 13th DAY OF July, 1976.

ROBERT L. CITRON  
COUNTY TAX COLLECTOR - TREASURER

BY *Shekhar*  
DEPUTY TAX COLLECTOR

EXAMINED AND APPROVED THIS 21st DAY OF July, 1976.

C.R. NELSON  
COUNTY SURVEYOR

BY *W. H. Nelson*  
DEPUTY

EXAMINED AND APPROVED BY THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH THIS 15th DAY OF APRIL, 1976.

BY *Richard W. Hogan*  
RICHARD W. HOGAN  
EX-OFFICIO SECRETARY

## MONUMENT NOTES:

1. SET 1" IRON PIPE TAGGED "L.S. 3109" AT ALL POINTS SHOWN THUS —
2. SET LEAD AND TACK TAGGED "L.S. 3109" AT ALL POINTS SHOWN THUS —
3. SET STANDARD CITY OF NEWPORT BEACH MONUMENT (2" BRASS CAP IN WELL) AT ALL POINTS SHOWN THUS —
4. SET SPIKE W/ BRASS WASHER STAMPED "L.S. 3109" IN THE FINISHED SURFACE AT ALL CENTERLINE POINTS OF CONTROL, UNLESS OTHERWISE NOTED
5. UNLESS OTHERWISE NOTED ABOVE, NUMBERED LOT CORNERS WHICH ABUT A STREET WILL BE MARKED WITH A LEAD AND TACK TAGGED "L.S. 3109" IN THE CURB OR SIDEWALK ON A 475' OFFSET BY PRODUCING THE SIDE LOT LINES AND BY PRODUCING THE RADIAL LINES FOR ALL OTHER SAID LOT CORNERS.
6. 2" IRON PIPE TAGGED "L.S. 3109" TO BE SET PER TRACT 9260 AT ALL POINTS SHOWN THUS —
7. 2" IRON PIPE TAGGED "L.S. 3109" TO BE SET PER TRACT 9261 AT ALL POINTS SHOWN THUS —
8. LEAD AND TACK TAGGED "L.S. 3109" TO BE SET PER TRACT 9261 AT ALL POINTS SHOWN THUS —

SEE SHEET 2 FOR BASIS OF BEARINGS.



SHEET 2 OF 4 SHEETS

SCALE: 1" = 40'

(FINAL UNIT OF TENT TR. 9047)

ACREAGE: 16.129

52 LOTS & LOTS A-H. INCLUSIVE.

IN THE CITY OF NEWPORT BEACH,

WILLIAM J. FROST, "L.S. 3109"  
RAUB • BEIN • FROST & ASSOCIATES  
FEBRUARY, 1976

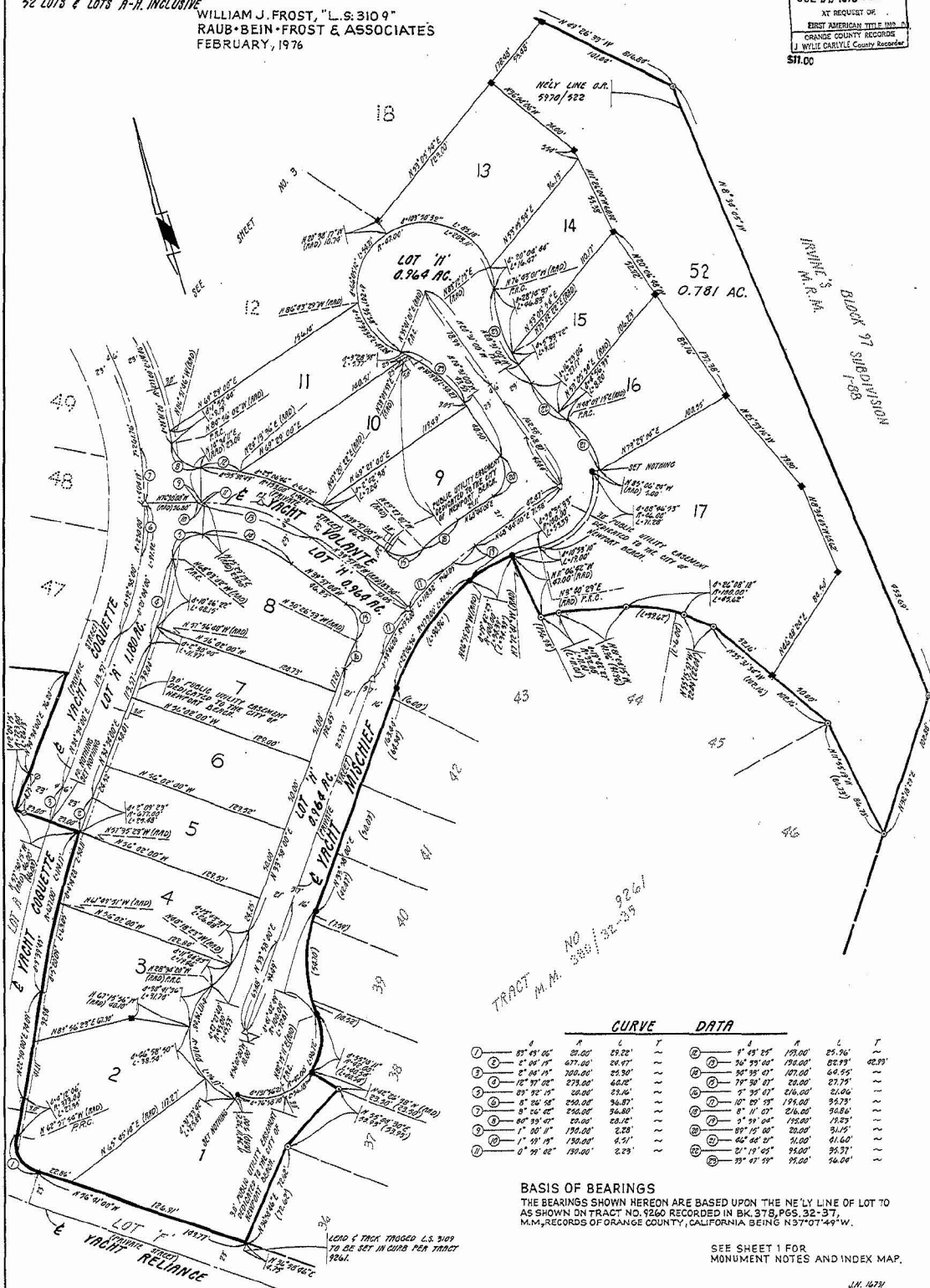
DUPLICATE

TRACT N<sup>o</sup> 9047

COUNTY OF ORANGE, STATE OF CALIFORNIA.

29125

ACCEPTED AND FILED  
JUL 22 1976 AT 8:00 AM  
AT REQUEST OF  
FIRST AMERICAN TITLE INS  
GRANDE COUNTY RECORDS  
J WYLIE CARLYLE County Recorder



23. 083

SHEET 3 OF 4 SHEETS

SCALE: 1" = 40'

(FINAL UNIT OF TENT. TR. 9047)

ACREAGE: 16.129

52 LOTS &amp; LOTS A-H. INCLUSIVE

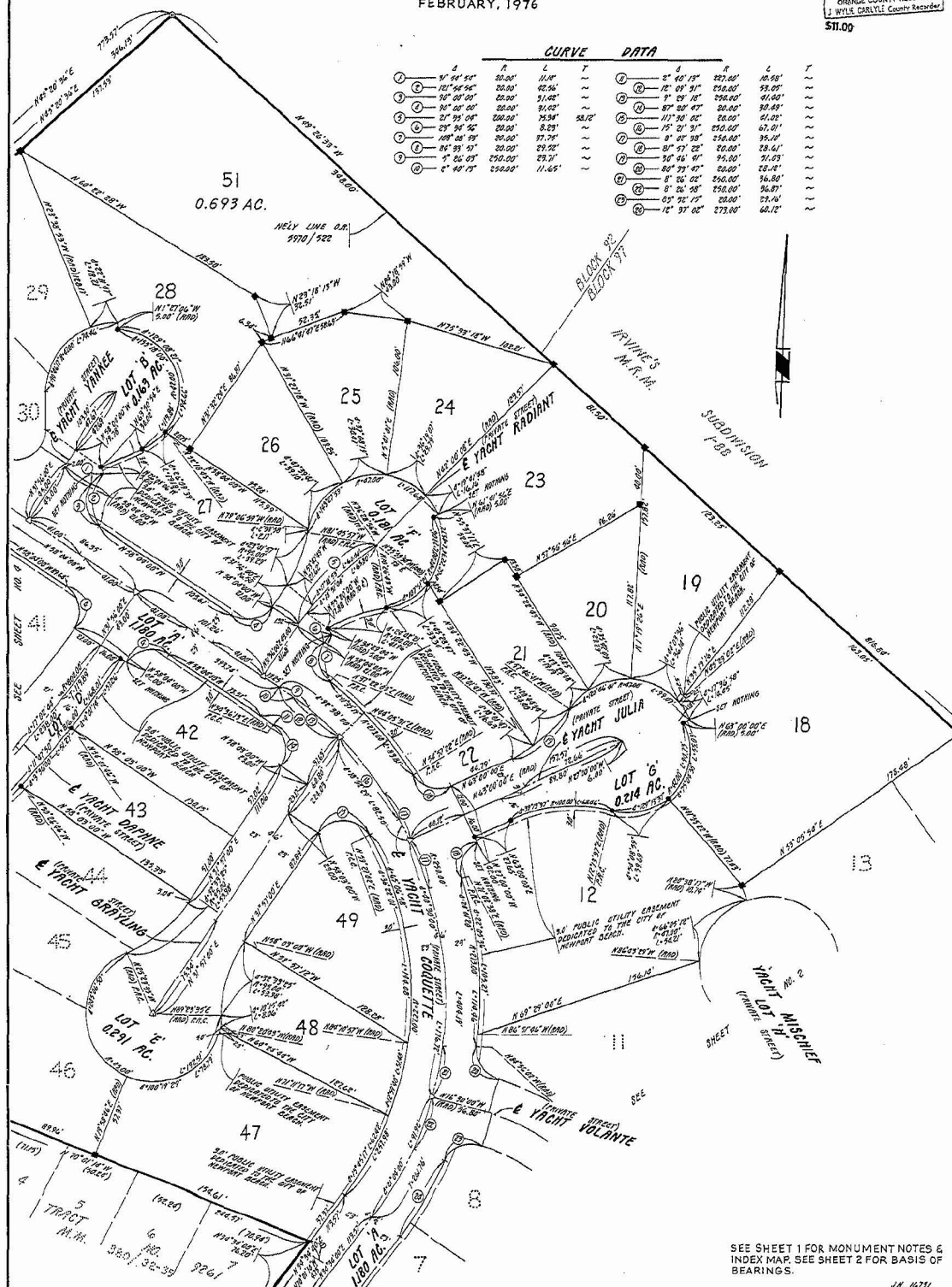
IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA.

WILLIAM J. FROST, "L.S. 3109"  
RAUB • BEIN • FROST & ASSOCIATES  
FEBRUARY, 1976

DUPLICATE

## TRACT No 9047

29125

ACCEPTED AND FILED  
JUL 22 1976 AT 8:00 AM  
AT REQUEST OF  
FIRST AMERICAN TITLE INS. CO.  
ORANGE COUNTY RECORDS  
J. WYLE CARLILE County Recorder  
\$11.00

SHEET 4 OF 4 SHEETS

SCALE: 1" = 40'

(FINAL UNIT OF TENT. TR. 9047)

ACREAGE: 16.129

52 LOTS &amp; LOTS A-H INCLUSIVE

## TRACT NO 9047

DUPLICATE

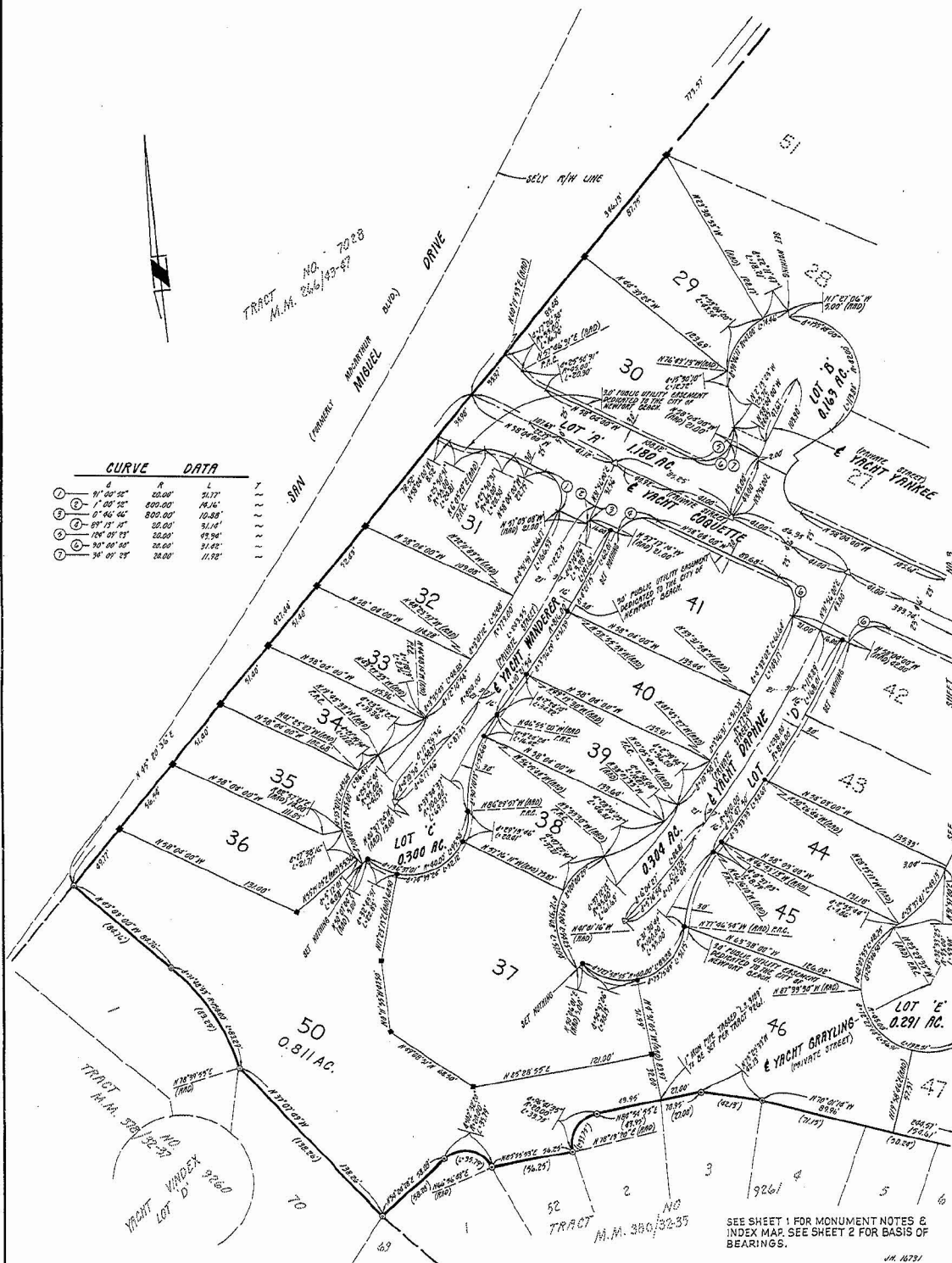
IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA.

WILLIAM J. FROST, "L.S. 3109"  
RAUB • BEIN • FROST & ASSOCIATES  
FEBRUARY, 1976

29125

ACCEPTED AND FILED  
JUL 22 1976 AT 8:00 AM  
AT REQUEST OF  
FIRST AMERICAN TITLE INS. CO.  
ORANGE COUNTY RECORDS  
J. WYLLIE CHARLIE CLARK, Recorder  
\$11.00

CURVE	DATA	
1	91° 00' 52"	20.00'
2	1° 00' 52"	800.00'
3	0° 46' 46"	800.00'
4	0° 17' 50"	30.00'
5	124° 05' 13"	20.00'
6	90° 00' 00"	20.00'
7	94° 01' 29"	20.00'

SEE SHEET 1 FOR MONUMENT NOTES &  
INDEX MAP. SEE SHEET 2 FOR BASIS OF  
BEARINGS.

J.M. 10751

## EXHIBIT 19



# TRACT No 9261

IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA.

BEING A PORTION OF BLOCKS 32 & 37 OF IRVINE'S SUBDIVISION, AS SHOWN ON A MAP RECORDED IN BOOK 1, PAGE 88 OF MISCELLANEOUS RECORD MAPS, AND LOT 'B' AS SHOWN ON A MAP OF TRACT NO. 9261, RECORDED IN BOOK 378, PAGES 32 THROUGH 37 OF MISCELLANEOUS MAPS, BOTH RECORDS OF ORANGE COUNTY, CALIFORNIA.

FEBRUARY, 1976.

13.583 ACRES

52 LOTS AND LOTS A-F INCLUSIVE

WILLIAM J. FROST L.S. 3109  
RAUB BEIN FROST & ASSOCIATES

WE, THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND COVERED BY THIS MAP, DO HEREBY CONSENT TO THE PREPARATION AND RECORDED OF SAID MAP, AS SHOWN WITHIN THE COLORED BORDER LINE AND WE HEREBY OFFER FOR DEDICATION TO THE CITY OF NEWPORT BEACH AN EASEMENT IN AND OVER LOTS A, B, C, D, E & F AS SHOWN FOR EMERGENCY AND PUBLIC SECURITY INGRESS AND EGRESS AND PUBLIC UTILITY PURPOSES; THE PUBLIC UTILITY EASEMENTS AS SHOWN, THE DOMESTIC WATER DISTRIBUTION SYSTEM AND APPURTENANCES AND THE SEWER COLLECTION SYSTEM AND APPURTENANCES LOCATED WITHIN SAID LETTERED LOTS AND EASEMENTS.

**BROADMOOR HOMES INC.,**  
a corporation.

GLENN H. GRENGLE  
EXECUTIVE VICE PRESIDENT

S. REID GUSTAFSON  
VICE PRESIDENT

## FIRST AMERICAN TITLE INSURANCE COMPANY,

A CALIFORNIA CORPORATION, TRUSTEE UNDER DEEDS OF TRUST RECORDED IN BOOK 11672, PAGE 1824 OF O.R. AND IN BOOK 11722, PAGE 1633 OF O.R.

ROBERT L. CITRON  
VICE PRESIDENT

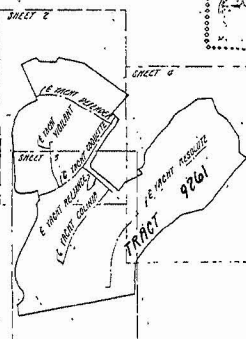
WILLIAM J. FROST  
ASSISTANT SECRETARY

STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }  
ON THIS 22<sup>ND</sup> DAY OF MARCH, 1976, BEFORE ME, WILLIAM J. FROST,  
A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED  
GLENN H. GRENGLE, KNOWN TO ME TO BE THE EXECUTIVE VICE  
PRESIDENT AND S. REID GUSTAFSON, KNOWN TO ME TO BE THE  
VICE PRESIDENT OF BROADMOOR HOMES, INC., A CORPORATION,  
THE CORPORATION THAT EXECUTED THE WITHIN INSTRUMENT AND KNOWN TO ME  
TO BE THE PERSONS WHO EXECUTED THE WITHIN INSTRUMENT ON BEHALF OF  
THE CORPORATION HEREIN NAMED AND ACKNOWLEDGED TO ME THAT SUCH  
CORPORATION EXECUTED THE SAME.

WITNESS MY HAND AND OFFICIAL SEAL:  
MY COMMISSION EXPIRES 8-7-77

STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }  
ON THIS 4<sup>TH</sup> DAY OF MAY, 1976, BEFORE ME, WILLIAM J. FROST,  
A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED  
ROBERT L. CITRON, KNOWN TO ME TO BE THE VICE  
PRESIDENT AND VERN SMITH, KNOWN TO ME TO BE THE  
2251STANT SECRETARY OF FIRST AMERICAN TITLE INSURANCE COMPANY,  
THE CORPORATION THAT EXECUTED THE WITHIN INSTRUMENT AND KNOWN TO ME  
TO BE THE PERSONS WHO EXECUTED THE WITHIN INSTRUMENT ON BEHALF OF  
THE CORPORATION HEREIN NAMED AND ACKNOWLEDGED TO ME THAT SUCH  
CORPORATION EXECUTED THE SAME.

WITNESS MY HAND AND OFFICIAL SEAL:  
MY COMMISSION EXPIRES MAY 24 1977



INDEX MAP

A SOILS REPORT DATED DECEMBER 2, 1975 WAS PREPARED  
BY ALBERT R. KLEIST, R.C.E. 16351.

29124

ACCEPTED AND FILED  
JUL 22 1976 AT 8:00 AM  
AT REQUEST OF  
FIRST AMERICAN TITLE INS. CO.  
ORANGE COUNTY RECORDS  
J. WYLLIE CARLISLE County Recorder

\$11.00

I, WILLIAM J. FROST, DO HEREBY CERTIFY THAT I AM LICENSED LAND SURVEYOR (NO. 3109) OF THE STATE OF CALIFORNIA; THAT THIS MAP, CONSISTING OF FOUR (4) SHEETS, AND THE TRUE AND COMPLETE SURVEY MADE IN FEBRUARY, 1976, WHICH IT CORRECTLY REPRESENTS, WERE BOTH MADE BY ME OR UNDER MY DIRECTION; THAT THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR WILL BE SET IN SUCH POSITIONS WITHIN NINETY DAYS AFTER THE ACCEPTANCE OF IMPROVEMENTS; AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

WILLIAM J. FROST, L.S. 3109

I, BENJAMIN B. NOLAN, CITY ENGINEER OF THE CITY OF NEWPORT BEACH, ORANGE COUNTY, CALIFORNIA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THIS MAP AND HAVE FOUND IT TO BE SUBSTANTIALLY THE SAME AS THE TENTATIVE MAP AS FILED WITH, AMENDED AND APPROVED BY THE CITY PLANNING COMMISSION; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND CITY SUBDIVISION REGULATIONS HAVE BEEN COMPLIED WITH, AND I AM SATISFIED SAID MAP IS TECHNICALLY CORRECT.

DATED THIS 12<sup>TH</sup> DAY OF JULY, 1976.

BENJAMIN B. NOLAN, CITY ENGINEER R.C.E. 12805

STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }

I, W.E. ST. JOHN, COUNTY CLERK OF ORANGE COUNTY, DO HEREBY CERTIFY TO THE COUNTY RECORDER OF SAID COUNTY THAT THE PROVISIONS OF THE SUBDIVISION MAP ACT HAVE BEEN COMPLIED WITH REGARDING DEPOSIT TO SECURE PAYMENT OF TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES ON THE LAND COVERED BY THIS MAP.

DATED THIS 20<sup>TH</sup> DAY OF JULY, 1976.

W.E. ST. JOHN  
COUNTY CLERK OF ORANGE COUNTY

DEPUTY

STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }

I, DORIS GEORGE, CITY CLERK OF THE CITY OF NEWPORT BEACH, DO HEREBY CERTIFY THAT THIS MAP WAS PRESENTED FOR APPROVAL TO THE CITY COUNCIL OF SAID CITY AT A REGULAR MEETING THEREOF HELD ON THE 22<sup>ND</sup> DAY OF MARCH, 1976, AND THAT THEREUPON SAID COUNCIL, DID BY AN ORDER DULY PASSED AND ENTERED APPROVE SAID MAP AND DID ACCEPT ON BEHALF OF THE CITY OF NEWPORT BEACH AN EASEMENT IN AND OVER LOTS A, B, C, D, E & F FOR EMERGENCY AND PUBLIC SECURITY INGRESS AND EGRESS AND PUBLIC UTILITY PURPOSES, THE PUBLIC UTILITY EASEMENTS, THE DOMESTIC WATER DISTRIBUTION SYSTEM AND APPURTENANCES AND THE SEWER COLLECTION SYSTEM AND APPURTENANCES AS DEDICATED; AND DID ALSO APPROVE SAID MAP PURSUANT TO SECTION 66438(b)(1) OF THE SUBDIVISION MAP ACT.

DATED THIS 18<sup>TH</sup> DAY OF JULY, 1976. BY DORIS GEORGE CITY CLERK

STATE OF CALIFORNIA } S.S.  
COUNTY OF ORANGE }

I, ROBERT L. CITRON, COUNTY TAX COLLECTOR - TREASURER OF ORANGE COUNTY, DO HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF MY OFFICE THERE ARE NO LIENS AGAINST THE LAND SHOWN WITHIN THE COLORED BORDER ON THIS MAP OR ANY PART THEREOF FOR UNPAID STATE COUNTY OR CITY TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES NOT YET DUE AND PAYABLE.

DATED THIS 12<sup>TH</sup> DAY OF JULY, 1976.

ROBERT L. CITRON  
COUNTY TAX COLLECTOR - TREASURER

DEPUTY TAX COLLECTOR

EXAMINED AND APPROVED THIS 24<sup>TH</sup> DAY OF JULY, 1976.

C.R. NELSON  
COUNTY SURVEYOR

DEPUTY

EXAMINED AND APPROVED BY THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH THIS 4<sup>TH</sup> DAY OF MARCH, 1976.

RICHARD V. HOGAN  
EX-OFFICIO SECRETARY

### SIGNATURE OMISSIONS NOTE

PURSUANT TO THE PROVISIONS OF SECTION 66436 (b) OF THE SUBDIVISION MAP ACT, THE FOLLOWING SIGNATURES HAVE BEEN OMITTED: THE IRVINE COMPANY, HOLDER OF AN AIRSPACE EASEMENT BY DEED RECORDED IN BOOK 9756, PAGE 527 OF O.R.; AND THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, OWNER OF RIGHT OF WAY FOR EXISTING ROADS BY DEEDS RECORDED IN BK. 1211, PG. 317 OF O.R., AND IN BK. 2402, PG. 463 OF O.R.

### MONUMENT NOTES:

1. SET 2" IRON PIPE TAGGED "L.S. 3109" AT ALL POINTS SHOWN THUS —○—
2. SET 1" IRON PIPE TAGGED "L.S. 3109" AT ALL POINTS SHOWN THUS —●—
3. SET LEAD & TACK TAGGED "L.S. 3109" AT ALL POINTS, SHOWN THUS —●—
4. SET STANDARD CITY OF NEWPORT BEACH MONUMENT (2" PUNCHED BRASS CAP IN WELL) AT ALL POINTS, SHOWN THUS —○—
5. SET 8" SPIKE W/ BRASS DISK STAMPED "L.S. 3109" IN THE FINISHED SURFACE AT ALL CENTERLINE POINTS OF CONTROL, UNLESS OTHERWISE NOTED.
6. UNLESS OTHERWISE NOTED ABOVE, NUMBERED LOT CORNERS WHICH ABUT A STREET WILL BE MARKED WITH A LEAD & TACK TAGGED "L.S. 3109" IN THE CURB OR SIDEWALK ON A 4.75' OFFSET, BY PRODUCING THE "SIDE LOT LINES" AND BY PRODUCING THE RADIAL LINES FOR ALL OTHER SAID LOT CORNERS.

### BASIS OF BEARINGS:

THE BEARINGS SHOWN HEREON ARE BASED ON THE NORTHEASTERLY LINE OF LOT 69 AS SHOWN ON TRACT 9260 RECORDED IN BOOK 378, PAGES 32 THROUGH 37, M.M., RECORDS OF ORANGE COUNTY CALIFORNIA, BEING N 44° 54' 31" W.

380-32

380

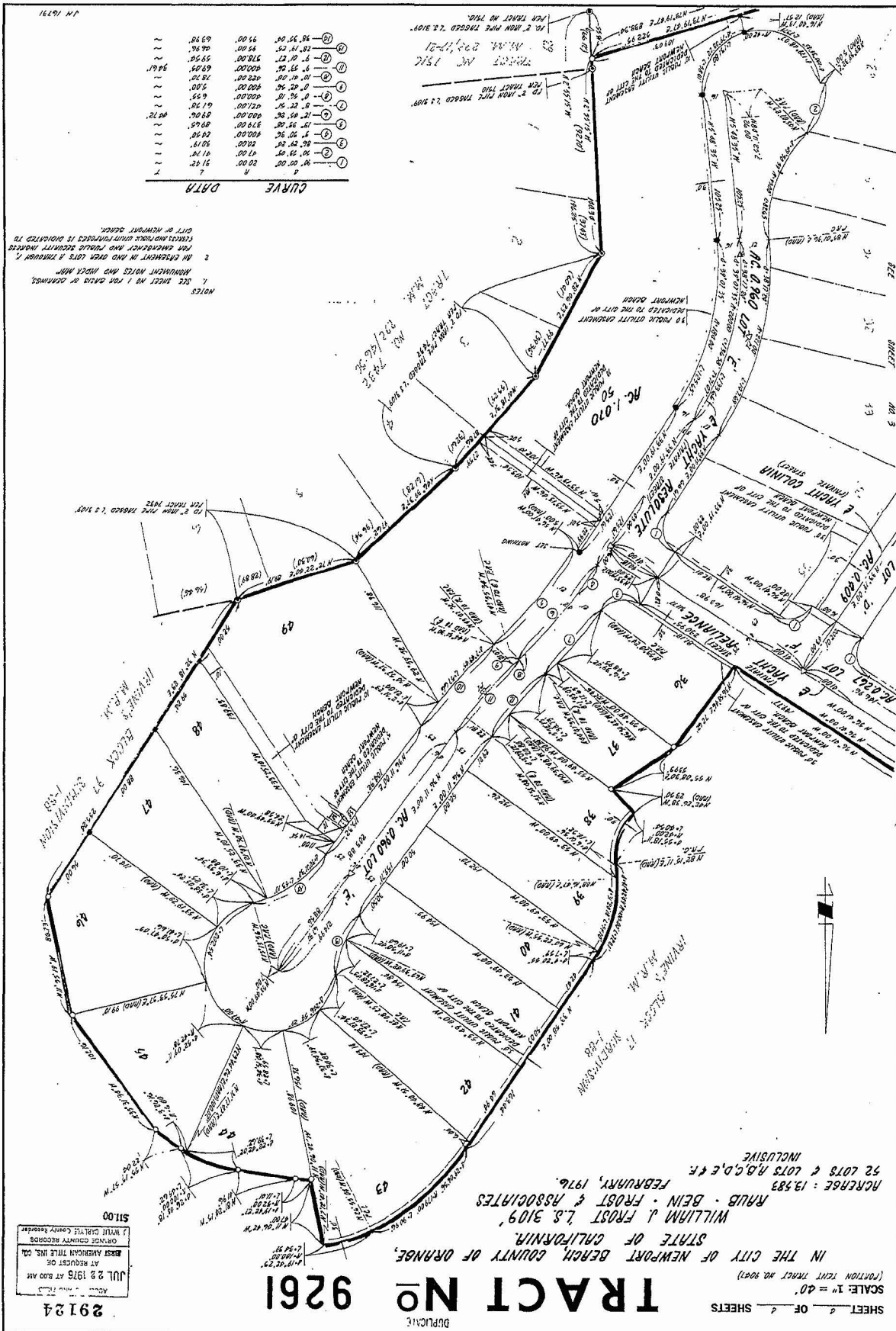
NOTES

1. SEE SHEET 1 FOR BASIS OF DRAINAGES,
2. AN EMBANKMENT IN AND OVER LOTS B THROUGH F,  
FOR GROUNDWATER AND PUBLIC SECURITY PURPOSES AND EXPRESS  
AND PUBLIC UTILITY PURPOSES IS DEDICATED TO  
THE CITY OF NEWPORT DESIGN





380-35 380



## EXHIBIT 20



## List of Affected Homeowners

### SeaView Building Setbacks for Facing Lots

<u>Street</u>	<u>Number</u>	<u>Building Setback from Common Property Line</u>	<u>Name of Homeowner(s)</u>
Yacht Camilla	1905	9' 0"	Paula Rayburn
	1907	8' 0"	Mehdi Haidarali
Yacht Colinia	1901	7' 0"	Rick Ferncase; Anita Vermund
	1903	6' 0"	Helen Ann Langmade; Carole Mortimer
Yacht Daphne	2101	38' 0"	Claudette Shaw
	2103	25' 0" *	Barbara Siebert
Yacht Enchantress	1903	5' 4"	Don & Erna Minkoff
	1905	6' 4"	Mark & Tonie Meyer
Yacht Julia	2127	8' 0" *	Dewey & Dorothy Savage
	2130	16' 0"	Hanna & Mark Rubin Struever
Yacht Maria	1903	7' 0" *	Eleanor Kurrasch
	1905	7' 6"	Tony & Nancy GIBLIN
Yacht Mischief	2003	12' 0" *	James & Patricia White
	2005	10' 0"	Greg & Jana McConaughy
Yacht Radiant	2125	8' 0"	John & Kelly Bonett
	2127	9' 0" *	Steve & Karen Hinton
Yacht Resolute	2014	11' 6" *	Harvey Eisenberg
	2016	12' 0" *	Pat & Sally Tyne
Yacht Truant	1901	9' 0"	Thomas & Mary Cesario
	1903	6' 0"	William Rousey
Yacht Yankee	2123	10' 0"	Brian & Mary Donovan
	2125	9' 0"	Ted Helmer
Total Affected Homeowners	22		

\* Estimate based on plot plan.

Correspondence

Item No. 3.2

Minimum Side Setback Determination

PA2011-013

TO: Current Planning Staff

FROM: Javier

MEMO: RE: SETBACKS Broadmoor Pacific View PC  
(Yacht Streets)

Tract No. 9047 originally had a setback map approved for the development at Broadmoor Pacific View PC and required that each phase of the development should have an individual setback map approved prior to the issuance of building permits for each phase. Tract No. 9260 was the only file to show an approved setback map other than the map in the Tentative Tract Map File for No. 9047. Therefore, it is necessary to refer to Tentative Tract 9047 for front yard setback requirements for Tract No. 9047 and Tract No. 9261. Final Tract No. 9260 must be referred to for front yard setback requirements for both main building and the garage. All other tracts require that you refer to Tentative Tract No. 9047. Now that you are thoroughly confused here is an encapsulated version of the above:

Tract 9047

Reference

front: s.b. main  
          s.b. garage  
rear: s.b.  
sides: s.b.

Tent. Tract 9047 Setback Map  
P.C. Text  
P.C. Text  
P.C. Text

Tract 9260

Reference

front: s.b. main  
          s.b. garage  
rear: s.b.  
sides: s.b.

Final Tract No. 9260 Setback Map  
Final Tract No. 9260 Setback Map  
P.C. Text  
P.C. Text

Tract 9261

Reference

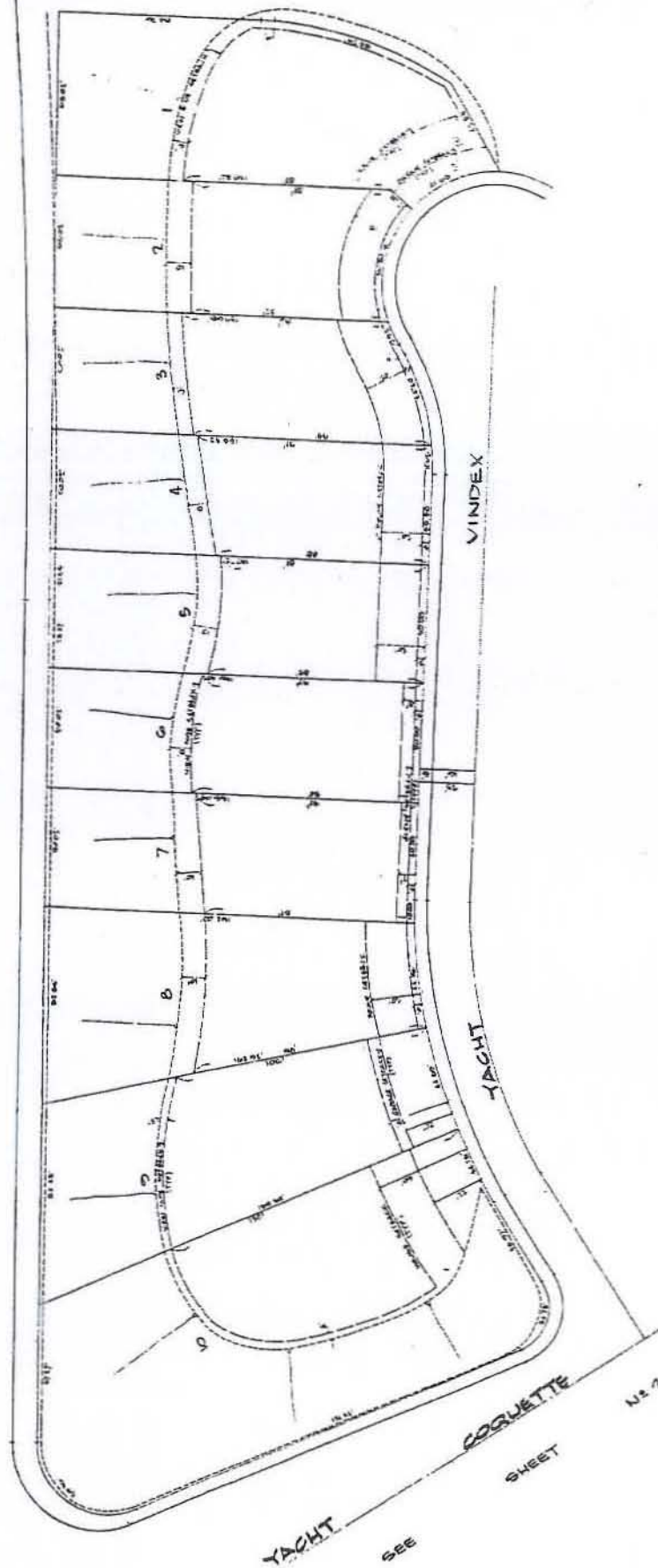
front: s.b. main  
          s.b. garage  
rear: s.b.  
sides: s.b.

Tent. Tract 9047 Setback Map  
P.C. Text  
P.C. Text  
P.C. Text

Please refer to the attached districting maps and the pages from the Broadmoor Pacific View Planned Community Text and make notations as indicated to avoid any further confusion. Thank you.

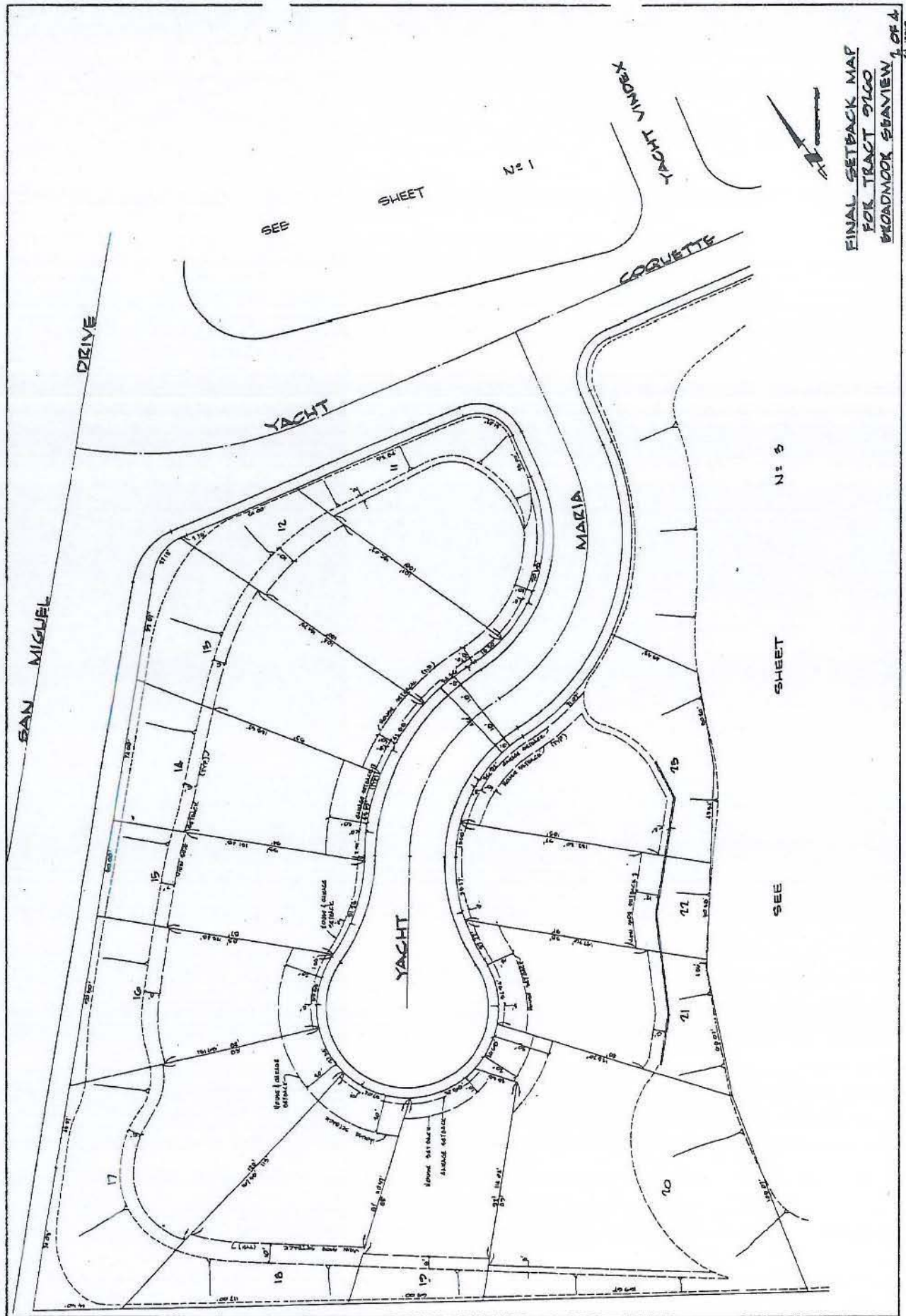
SAN MIGUEL

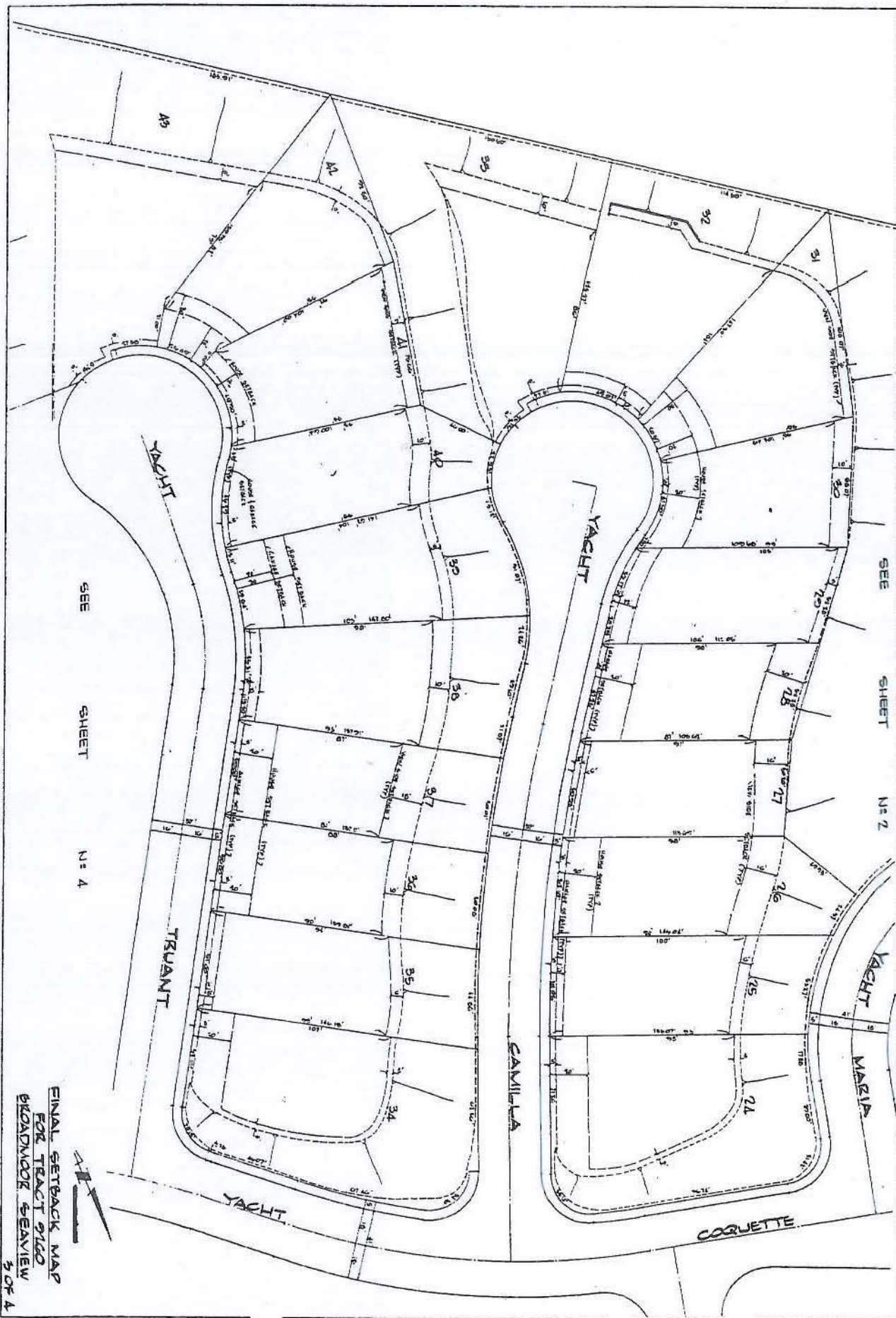
DRIVE



FINAL SETBACK MAP  
FOR TRACT 2700  
BROADMOOR SUBDIVISION

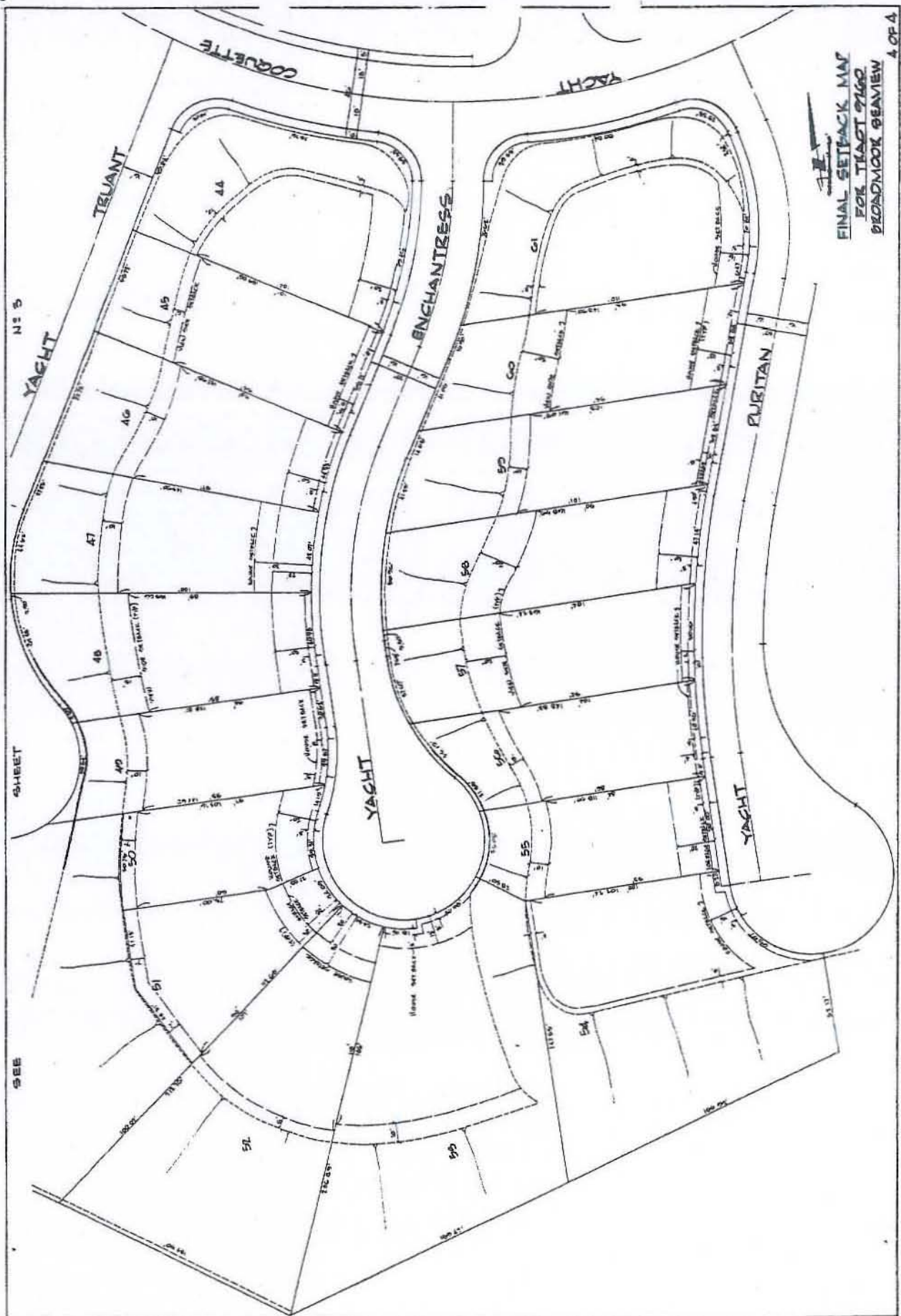




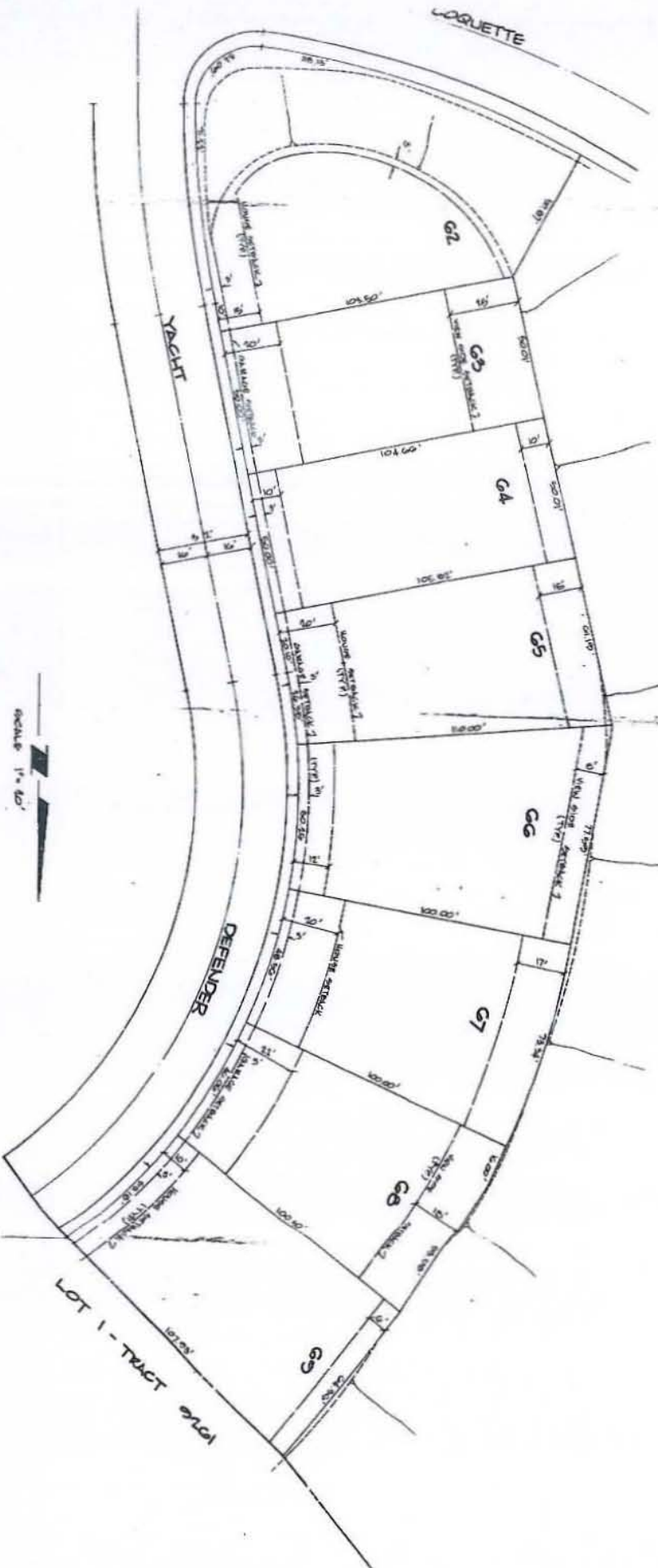


FINAL SETBACK MAP  
FOR TRACT 9160  
BROADMOOR BEACHVIEW



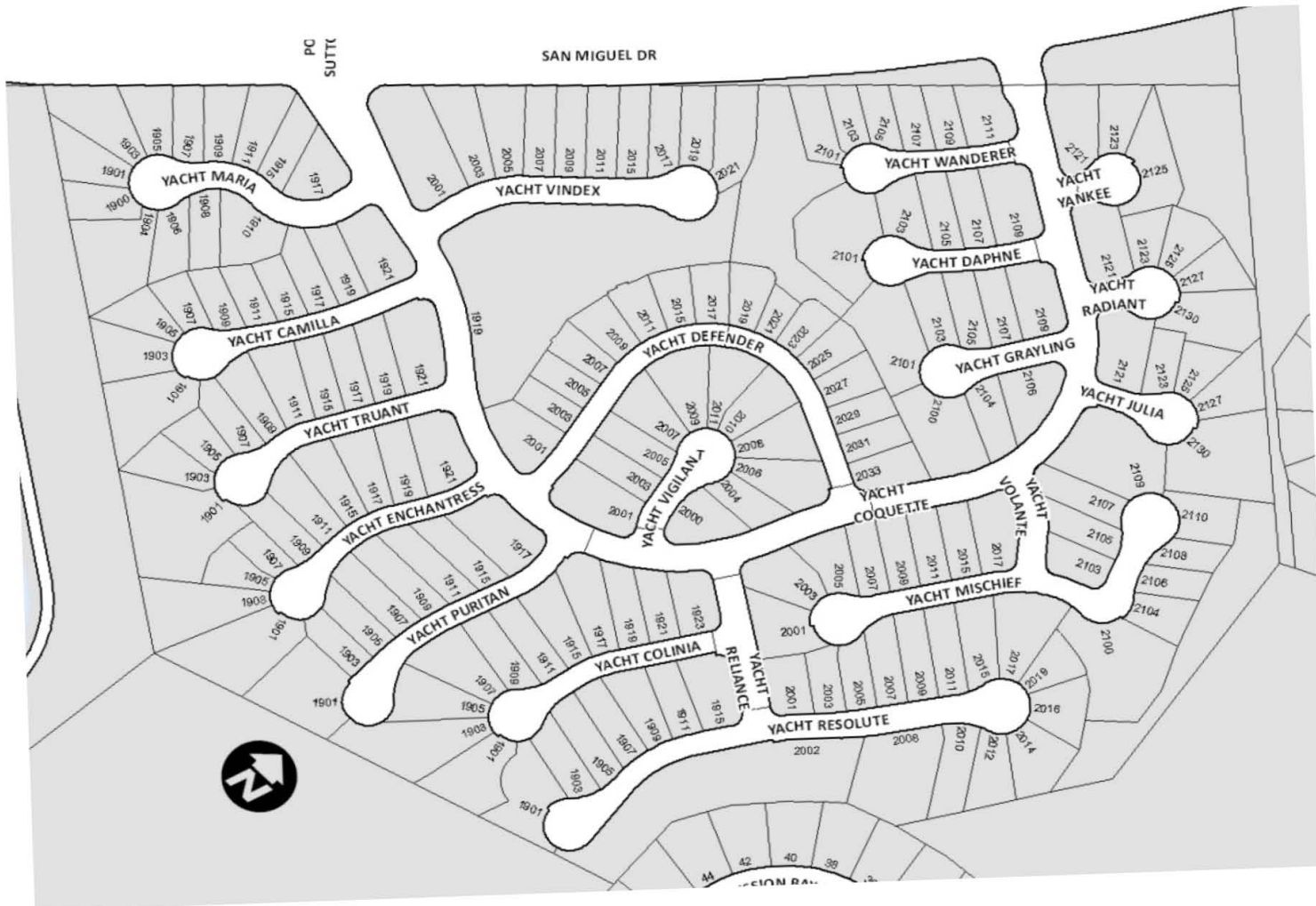


LOT 70 - RECREATION CENTER



FINAL SETBACK MAP  
FOR  
TRACT 9160 (MODEL AREA)  
BROADMOOR SEAVIEW

# Broadmoor Pacific View Planned Community





## Tentative Tract No. 9047 – 167 Lot Subdivision

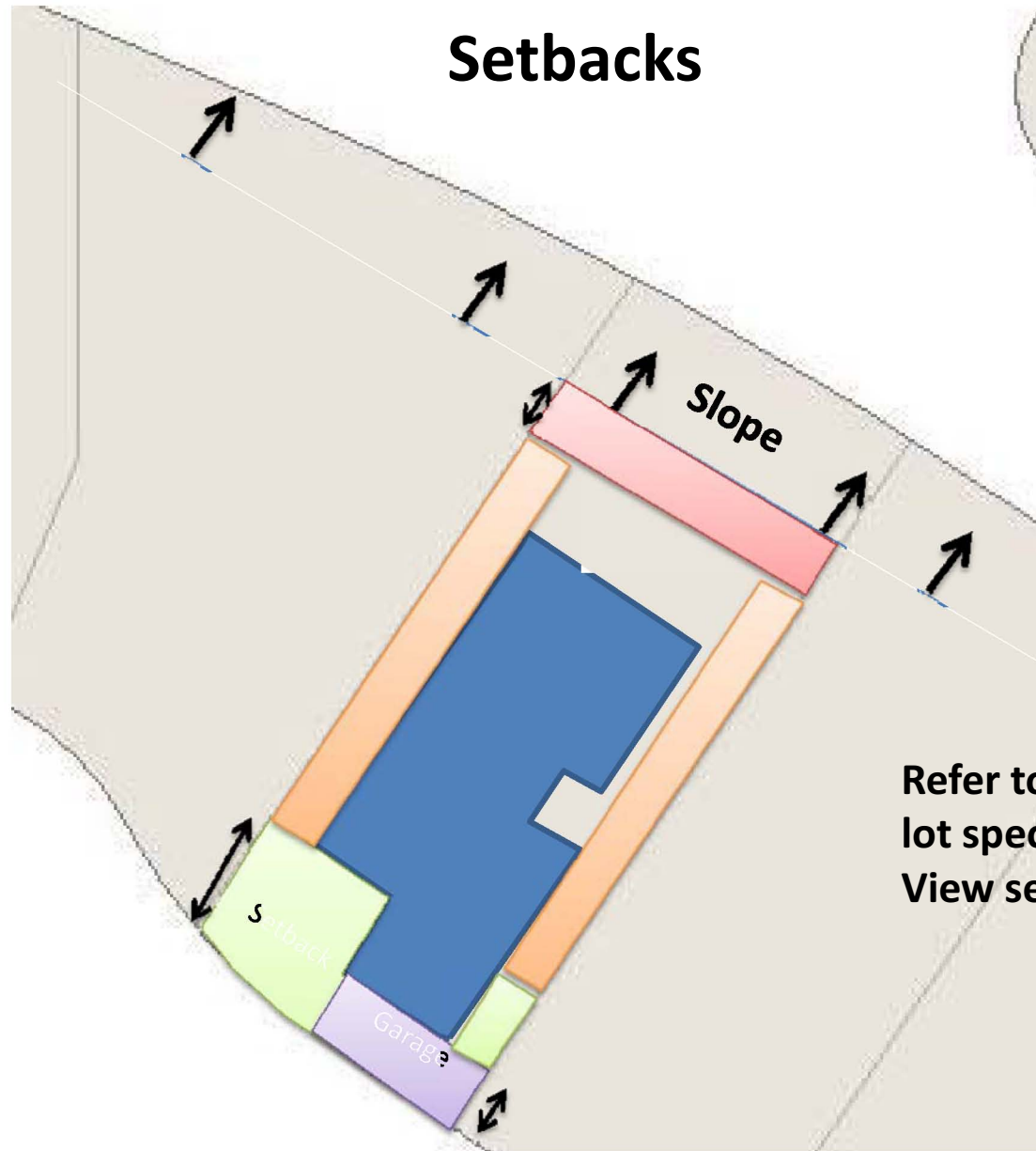
Final Tract No. 9047- 49 lots

Final Tract No. 9261- 49 lots

Final Tract No. 9260- 69 lots



# Setbacks



**Refer to Setback Maps for  
lot specific Street and  
View setbacks**

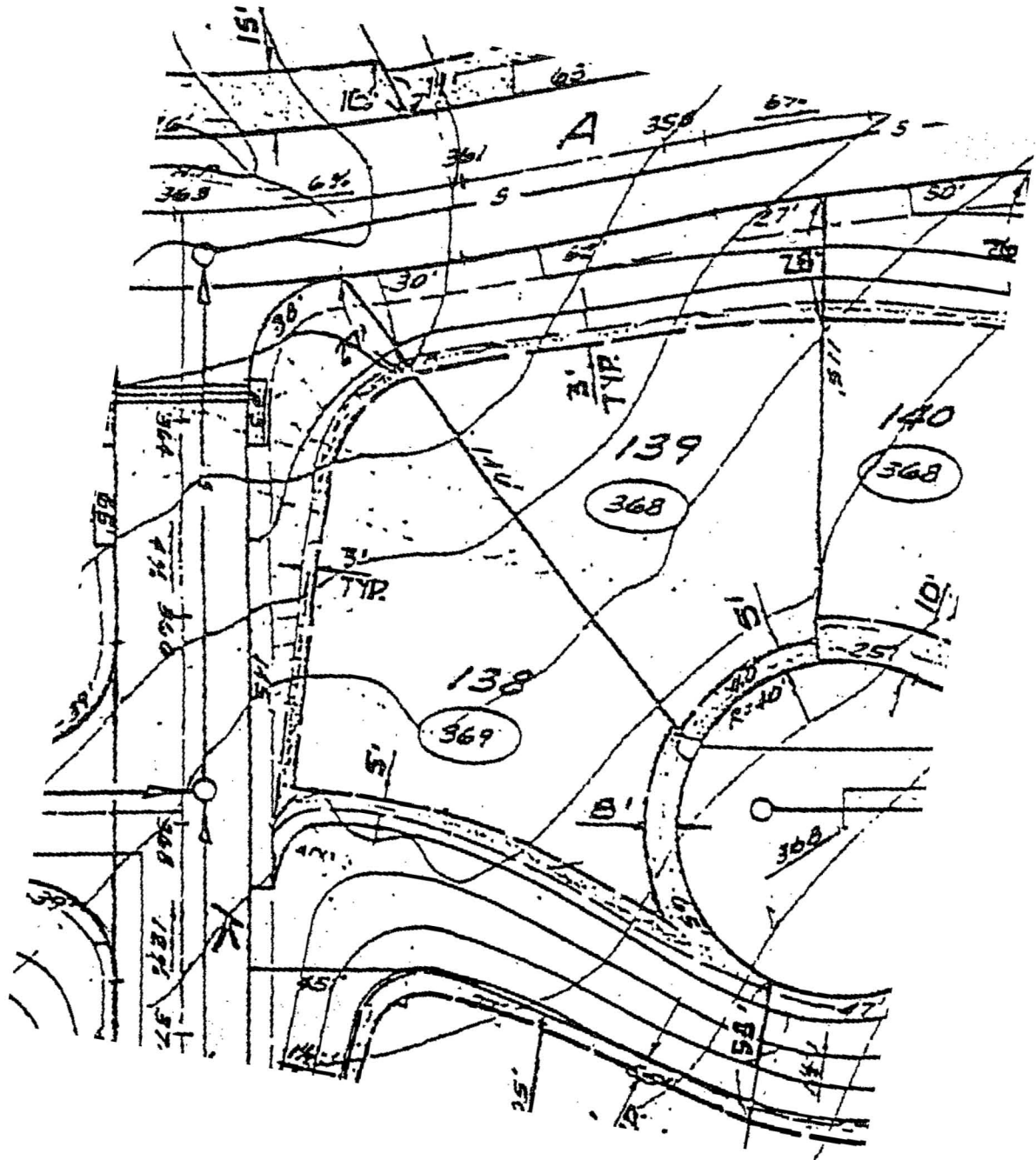
## 2 Questions

- 1) What site plan or map is the correct exhibit to reference when determining the street and view setbacks for homes in the Broadmoor Pacific View Planned Community?
- 2) How should side setbacks be regulated given that zero-side setbacks do not exist within the community?

[illegible]



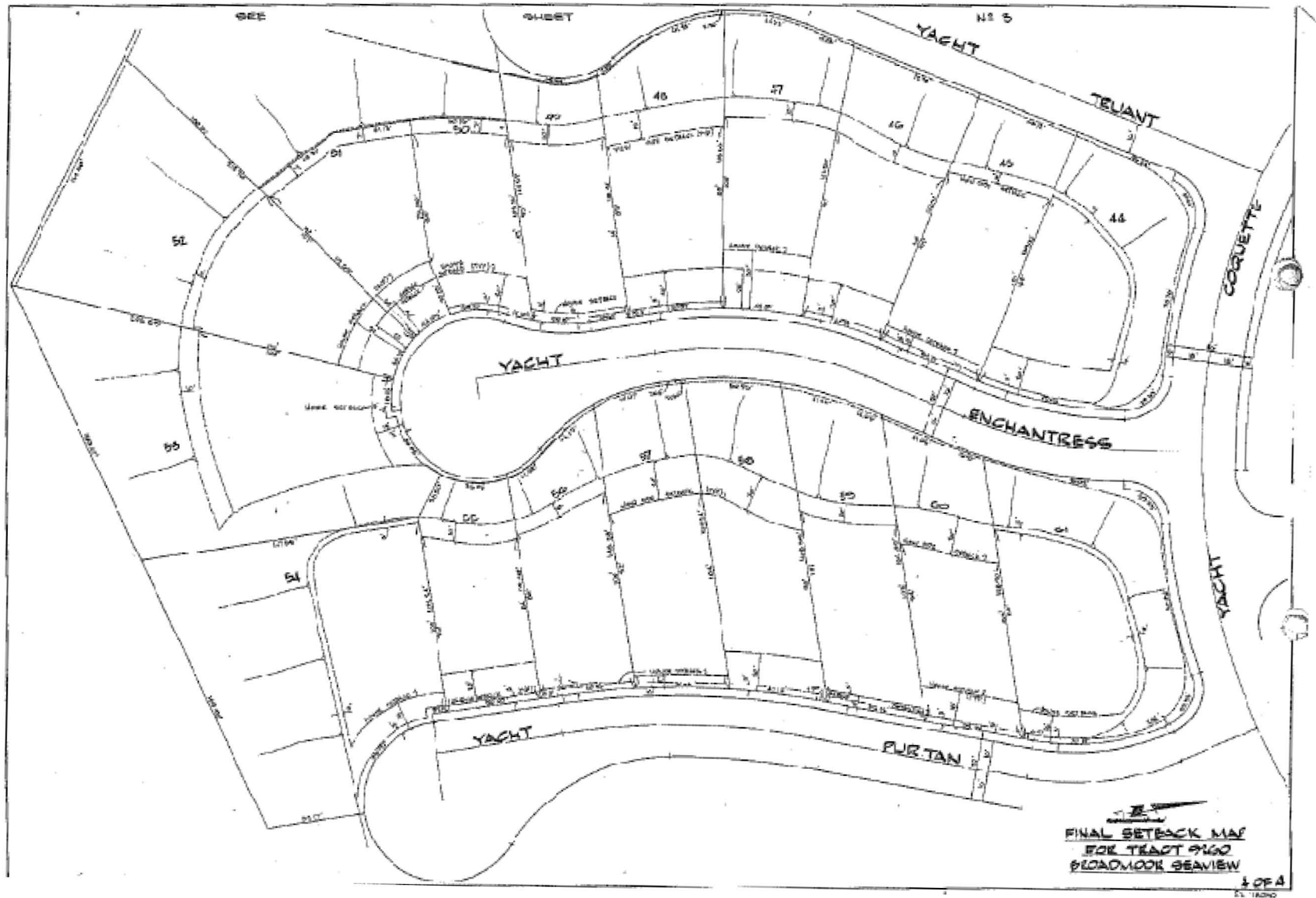
# Close up of Setback Map



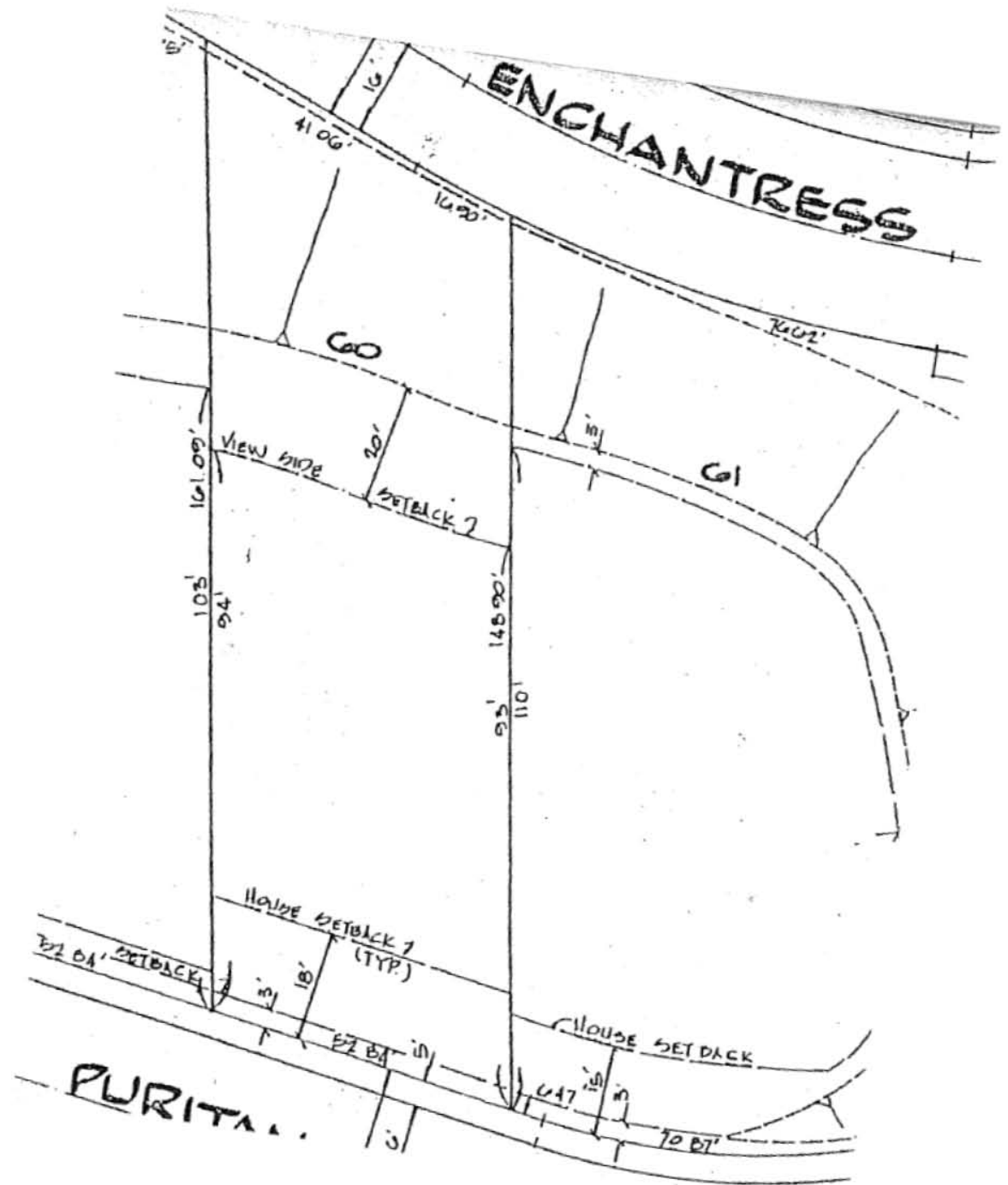


# Final Setback Map for Tract 9260

Establishes Street and View Setbacks for lots located with Tract No. 9260



# Close up of Setback Map



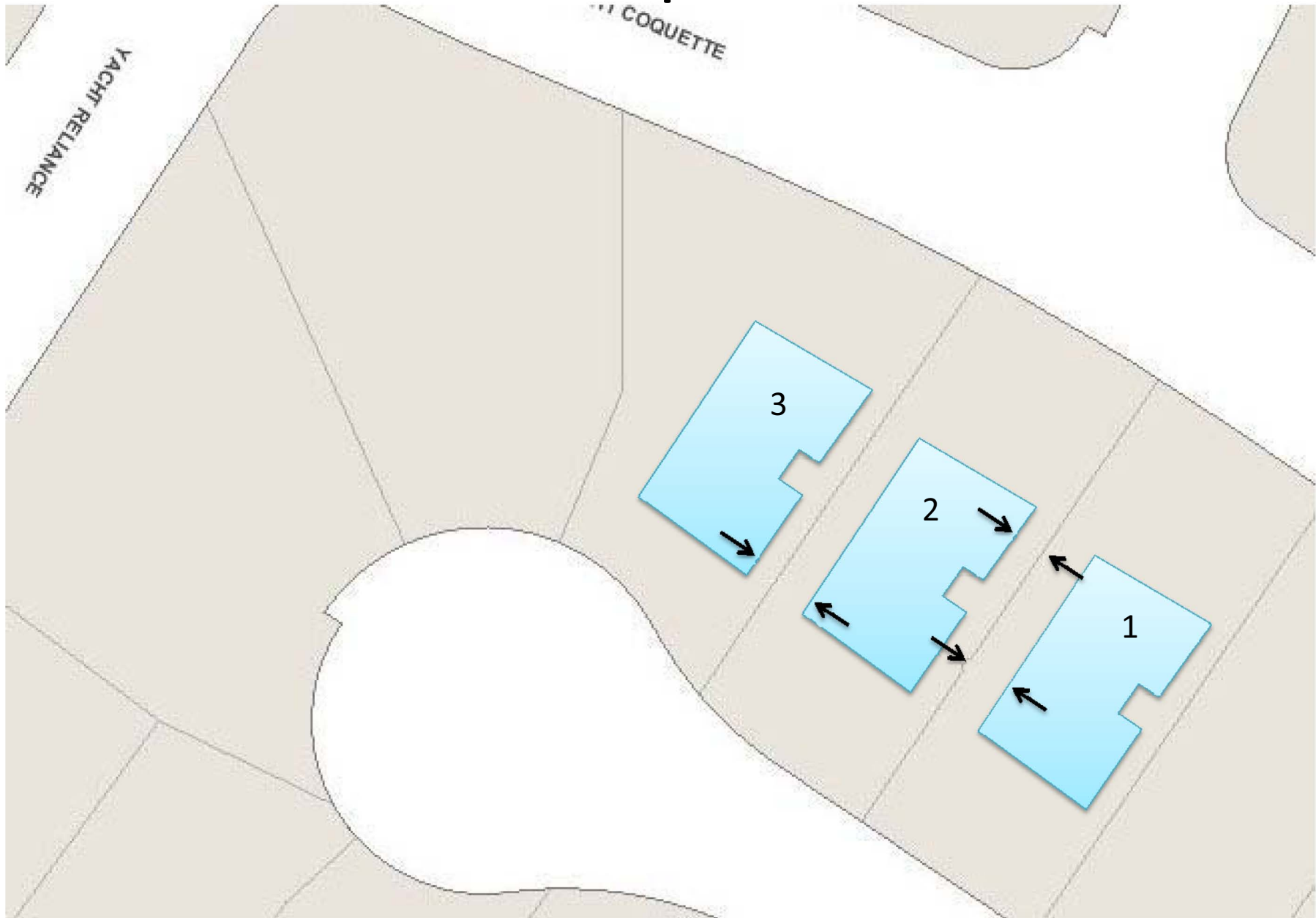
# Side Setback Regulation

*A zero side yard setback between the structure and the lot line shall be permitted on one side provided there are no openings on the zero side yard wall and that a total of ten (10) feet shall be provided between structures.*

# Typical Zero-Lot Line Development



## Actual Development Pattern



# Assumed Zero-Lot Line Configuration



# Assumed Zero-Lot Line Configuration





# Side Setbacks in Question

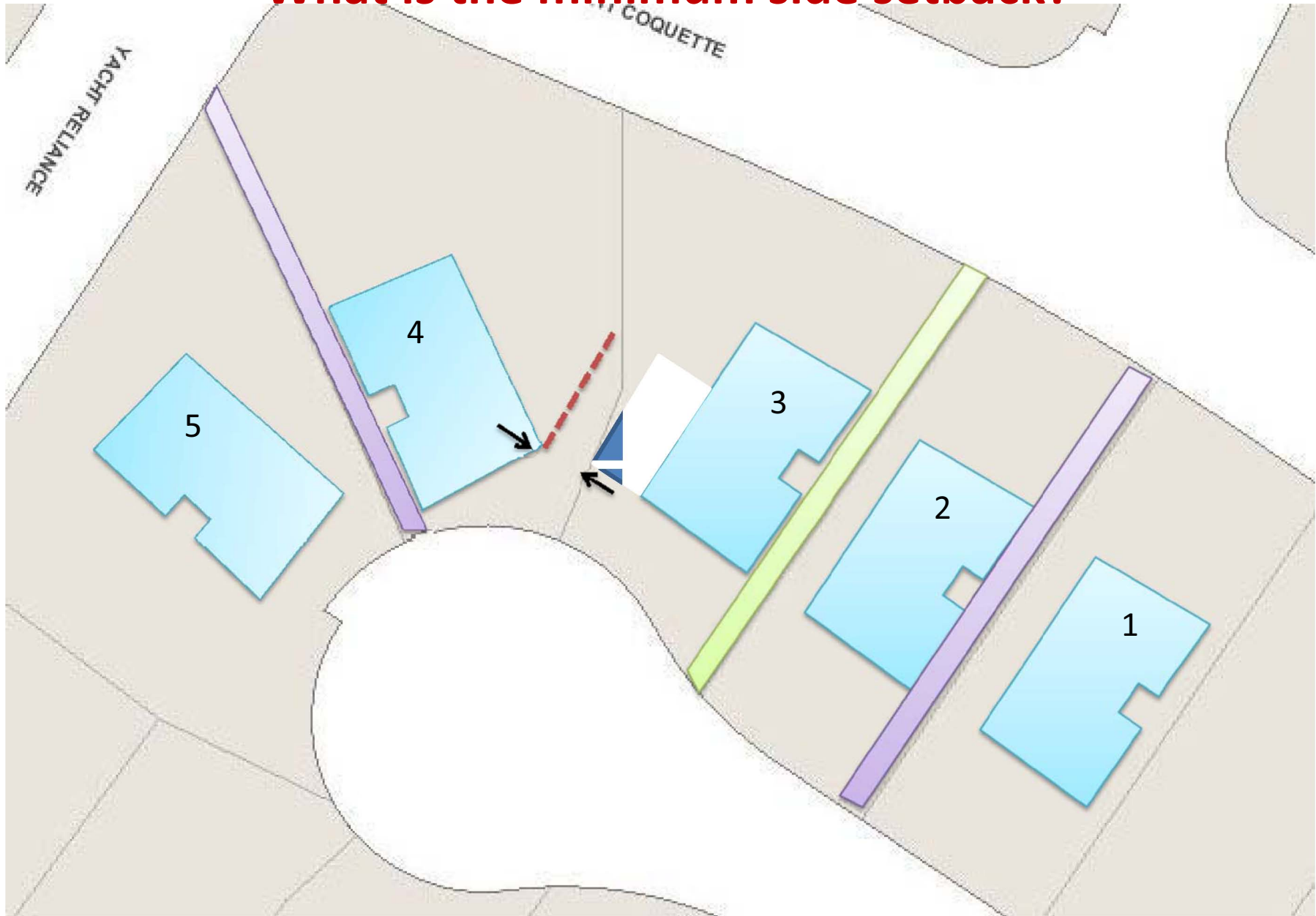
## What is the minimum side setback?





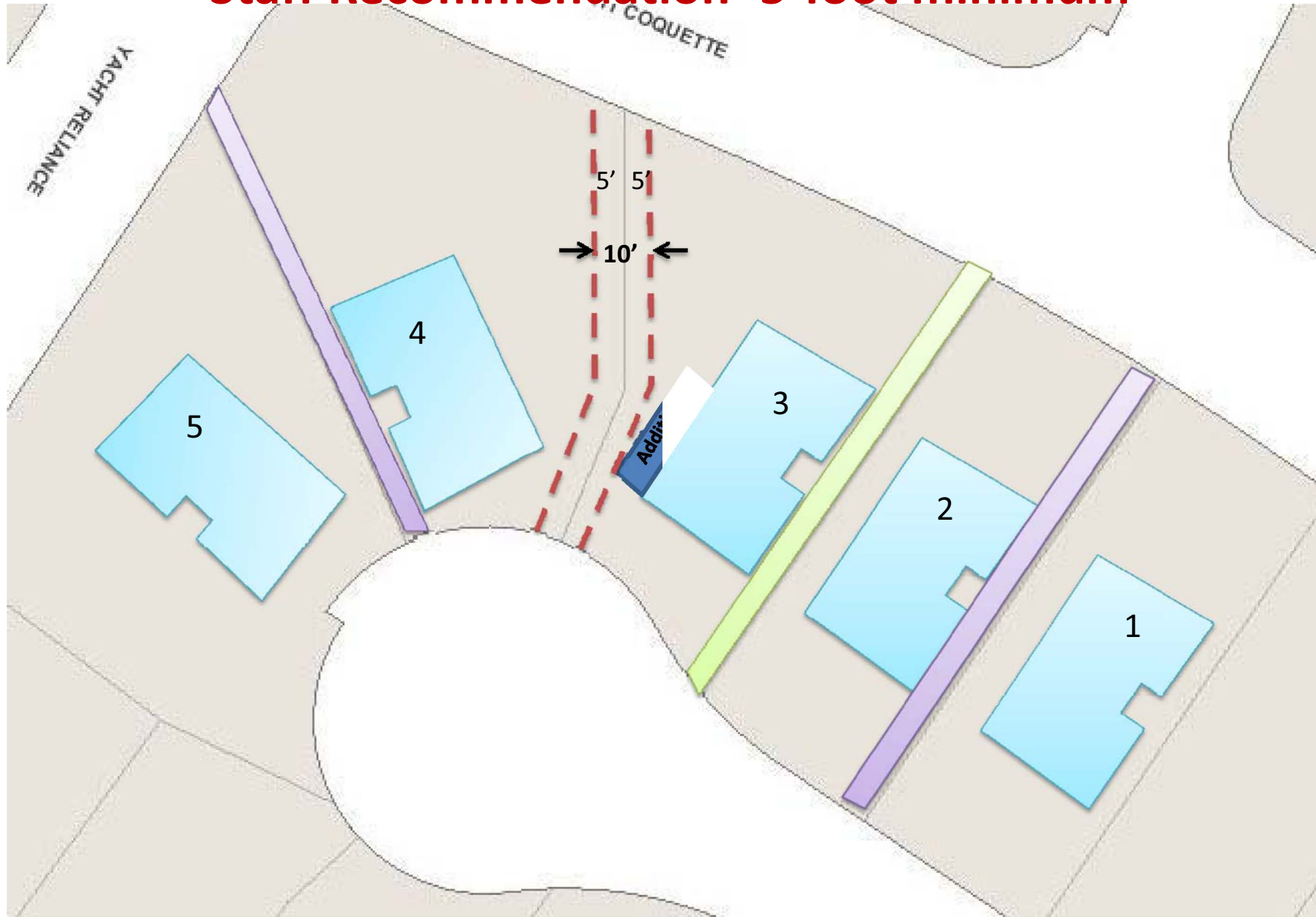
# Side Setbacks in Question

## What is the minimum side setback?



# Side Setbacks in Question

## Staff Recommendation- 5-foot minimum



# Whites' Interpretation

## D. Setbacks from Streets

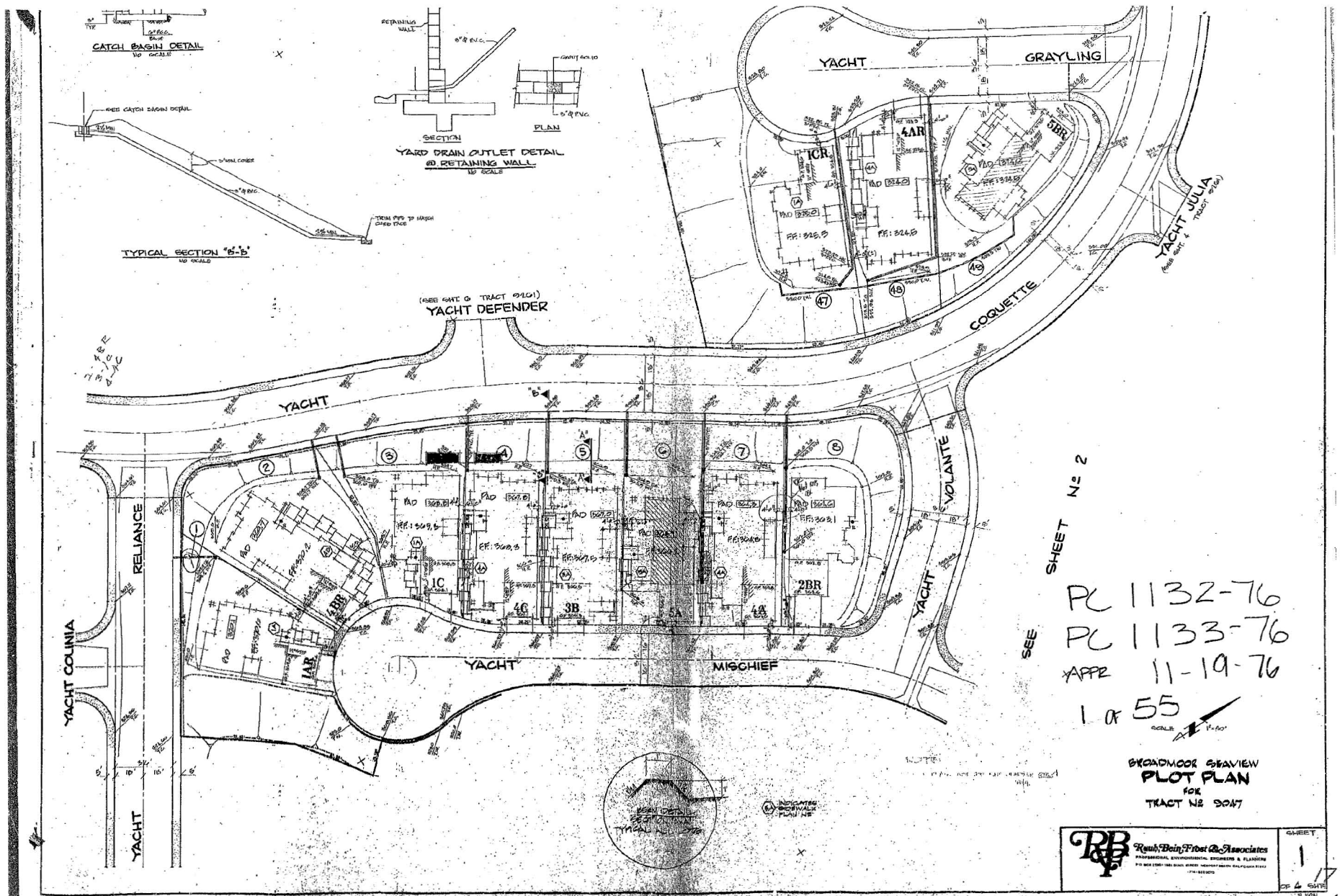
Prior to the issuance of building permits for each phase of the project, a final setback map shall be submitted to the Community Development Director indicating the setbacks to all building areas proposed in the development. The Community Development Director shall review said map and all future modifications of the setbacks shown on this map in view of setbacks listed in this ordinance and/or sound planning principles and shall either approve, modify, disapprove the setbacks shown, or refer the matter to the Planning Commission for a determination. In the case of modification or disapproval, the applicant may appeal to the Planning Commission for further consideration.

## E. Setbacks from Property Lines

### Rear or Front Yard

The building setback on the view side shall be a minimum of three (3) feet from the top of the slope. The rear yard setback shall be a minimum of ten (10) feet from the toe of the slope. The street and view side setbacks shall be established on the approved site plan.

# Permitted Site Plan – Construction Drawings



[illegible]

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

March 17, 2011

Agenda Item 4

**SUBJECT:** Zoning Code Implementation - Discussion Items

- Review Authority for Alcohol Sales
- In- Lieu parking Fee

**PLANNER:** Gregg Ramirez, Senior Planner  
(949) 644-3219, [gramirez@newportbeachca.gov](mailto:gramirez@newportbeachca.gov)

---

**SUMMARY**

At the March 3, 2011, Planning Commission meeting, the Commission directed staff to prepare an agenda item to discuss the review authority for alcohol sales and in-lieu parking fees.

**A) Review Authority for Alcohol Sales**

Under the previous zoning code, all alcohol sales, were subject to Use Permit review by the Planning Commission. The updated zoning code changed the review authority for some alcohol sales to the Zoning Administrator through the Minor Use Permit(MUP) process. The table below outlines the changes.

<b>Land Use</b>	<b>Review Authority - Old Code</b>	<b>Review Authority - Current Code</b>
Retail sales (off sale)	Planning Commission	Zoning Administrator
Restaurant – with alcohol sales, close by 11PM	Planning Commission	Zoning Administrator
Restaurant – with alcohol sales, close after 11PM	Planning Commission	Planning Commission
Bars and Nightclubs	Planning Commission	Planning Commission



**B) In-lieu Parking Fee**

The updated zoning code includes subsection 20.40.130, which reads as follows:

**20.40.130 - In-lieu Parking Fee**

*The number of parking spaces required by Section 20.40.040 (Off-Street Parking Spaces Required) may be reduced if the review authority authorizes the use of an in-lieu fee to be paid by the applicant towards the development of public parking facilities. The in-lieu fee shall be paid to the City-wide Parking Improvement Trust Fund. The amount of the fee and time of payment shall be established by Council resolution.*

The current fee is \$150 dollars per year per space waived. This fee was established many years ago and reflects a previous in-lieu parking program established by ordinance. The current program has been held in abeyance for over 12 years, although there are a handful of businesses and property owners who continue to pay the fee as required by conditions of approval. This fee is clearly not sufficient to purchase land and develop new parking lots, as the cost per space may exceed \$100,000 per space based upon the City's recent experience with the development of the expanded Balboa Village parking lot. The City has not prepared the necessary analysis to establish a new fee.

**RECOMMENDATION**

Discuss and provide direction staff.

**Environmental Review**

This is a discussion item only and is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**Public Notice**

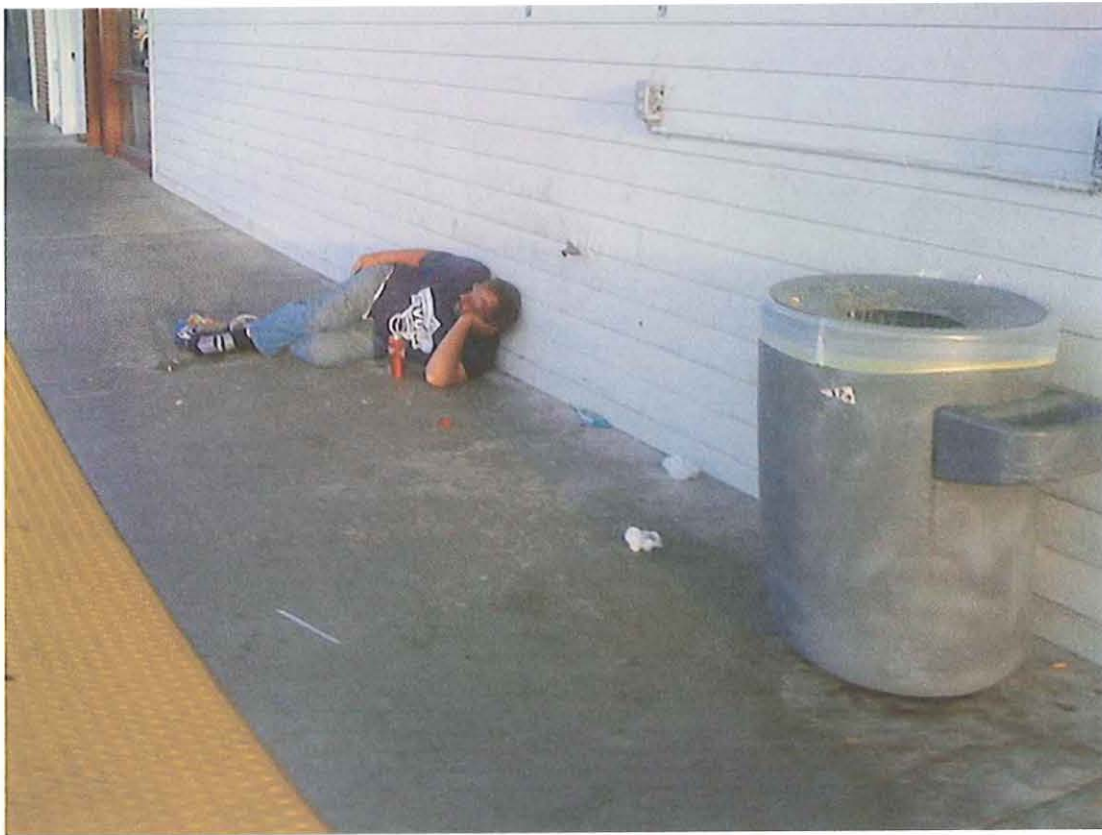
Notice of this discussion item was provided with the posting of the agenda included in accordance with applicable law. No additional notice was provided.

Prepared by:

Submitted by:

  
Gregg Ramirez, Senior Planner

  
James W. Campbell, Acting Deputy Director





Materials Received  
Item No. 4b  
Zoning Code Implementation  
Review Authority for Alcohol Sales  
In-Lieu Parking Fee

A Parking Requirement In-lieu Fee Dedicated to  
Transit Access In Los Angeles

Taylor Kaplan  
Urban and Environmental Policy Institute  
Occidental College  
Advisor: Professor Gottlieb  
Senior Comprehensive 2008-2009

Table of Contents

Executive Summary..... 3

Chapter 1: Introduction..... 6

Chapter 2: History of Parking and US Car Culture..... 15

Chapter 3: Background: Minimum Parking Requirements..... 19

Chapter 4: Reform for Los Angeles.....35

Chapter 5: Results: Up-date of Research on Cities Using In-lieu Fees.....44

Chapter 6: Discussing The Findings: Goals for an Effective In-lieu Fee.....52

Chapter 7: Recommendations for Future Research.....59

Works Consulted .....61

Appendix.....64

## **Executive Summary**

This report updates previous research and expands on the current understanding of in-lieu parking fees, while informing policy-makers about the criteria to develop sustainable parking policies. The research is intended to provide specific recommendations for the Los Angeles City Council and other governments on how to effectively implement an in-lieu fee for minimum parking requirements.

The cost of parking affects traffic, urban design and preservation, environmental quality, and housing costs. However, innovative policies such as in-lieu fees have modified parking problems and also improved the social, environmental, and economic foundations of cities. An in-lieu fee policy allows a developer to pay a fee in order to satisfy the minimum parking requirement for a property, rather than construct the spaces required by the city. The subsequent revenue collected by the city is dedicated to a variety of uses such as public transportation and the acquisition and development of public parking structures.

With the intention of contributing to new research relating to parking reforms, the study updates and expands on a previous study by Dr. Donald Shoup on cities currently using in-lieu fees. The updated evaluation of how these cities implement their respective policies is used to analyze Green LA's proposal intended for submission to the City Council titled "A Parking In-lieu Fee for Access: Support for Transit Corridors in Los Angeles." The findings of this report provide recommendations for the criteria necessary for a sustainable and effective in-lieu fee for not only Los Angeles, but also other cities striving to mitigate the negative affects of parking in their cities.

Updating the information on cities' in-lieu fees entailed researching city municipal codes

and zoning ordinances, as well as interviewing planners from each city. The research expands on the original study by looking at how the policy is being implemented in practice in order to recommend ways in which cities can optimize in-lieu fee policies in order to make significant parking reform. Interviews sought to expand on Dr. Shoup's study by evaluating the actual, and not just theoretical, implementation of in-lieu policies by the city and developers. The results show that planners identified benefits and disadvantages similar to those found by Dr. Shoup found in 1996. However developers in most cities do not frequently opt to use the fee for various reasons, which therefore limits the potential benefits that parking reform can bring to cities.

The study concludes with recommendations on how cities can implement an effective in-lieu fee policy. It was found that in cities where the fee was "optional," most developers did not opt to use the fee. Additionally, some cities used the fee only in specific districts. The results affirmed Dr. Shoup's claim that making an in-lieu fee mandatory, rather than optional, enhances the impact of the policy. Many cities only utilized the fee in downtown areas that are already built-out, and therefore experience few new developments that could use the fee. Therefore the study recommends that cities enforce the use of the in-lieu fee throughout various commercial, semi-commercial and mixed-use districts. This will allow the policy to influence new development and gradually dictate the city's relationship with parking and transportation, rather than only be applied to areas where few development changes will occur.

Recommendations include suggestions on the geographic applicability of an in-lieu fee. The study concluded that while most cities defined the area that the fee is used in by the CBD, no city used the availability of alternative transit as a deciding factor in where to apply the policy throughout the city. Therefore essential factors in how people drive and parking, such as buses

and rail lines, were not considered by cities in deciding where the fee should be applied.

Research found that the amount of fee collected varied drastically among the cities. Despite the reasonableness of the fee in some cities, developers did not always use the fee because of the added value parking spaces bring to a property. Therefore planners must understand how developers value the added parking spaces in order to evaluate the cost and benefit to the property of paying an in-lieu fee.

The study revealed that only four of the 24 cities surveyed identified clear shifts in the locations where parking takes place as a result of using an in-lieu fee. These shifts in parking are accredited to using the in-lieu fees and other parking revenues towards developing public parking facilities.

As the Los Angeles City Council considers Green LA's in-lieu fee proposal, "A Parking In-lieu Fee for Access: Support for Transit Corridors in Los Angeles," planners must consider the criteria recommended for an effective and sustainable in-lieu fee policy. The study concluded on three specific recommendations for Los Angeles' in-lieu fee: (1) dedicate revenues to access and alternative parking approaches, (2) define transit nodes and corridors in order to define the policy's geographic applicability and (3) and create a system to evaluate and enforce the level of in-lieu fee usage. Los Angeles can benefit from the in-lieu fee experiences of other cities. However it is essential that the City Council take into account Los Angeles' unique urban environment and assets such as transportation. By adopting an in-lieu fee policy, the City of Los Angeles will take steps towards not only parking reform, but also towards a sustainable transportation system and environment that will result from a city that depends less on automobile transportation and begins to explore alternative access options.

## **Chapter 1: Introduction of In-lieu Research**

*“Restore human legs as a means of travel. Pedestrians rely on food for fuel and need no special parking facilities.”<sup>1</sup>*

- Lewis Mumford

### **Introduction to a Parking Reform Option: In-lieu Fee**

Americans covet ample and free parking, which allows motorists to park their cars without charge 99% of the time.<sup>2</sup> However the cost of “free” parking is hidden in every part of society. While developers and city governments initially pay for parking, the cost is passed along to the rest of society by raising the cost of everything from housing to movie tickets. The cost of parking goes beyond financial issues, affecting traffic, urban design and preservation, as well as the environmental quality of a city. Nationwide, cities have begun implementing innovative policies such as in-lieu fees, which have not only modified parking problems, but also improved the social, environmental, and economic foundations of the cities. An in-lieu fee policy allows developers to pay a fee in order to satisfy the minimum-parking requirement, rather than construct the spaces required by the city. The subsequent revenue collected by the city is dedicated to a variety of uses such as public transportation and the acquisition and development of public parking structures. By reevaluating zoning and implementing an in-lieu fee for parking requirements, cities such as Los Angeles can begin to resolve urban problems such as sprawl, traffic congestion, pollution, disinvestment, and poor urban design.

While most urban cities in the U.S. enforce minimum parking requirements through zoning ordinances, some offer developers alternatives to providing the required number of parking spaces. As cities become more aware of the impact of parking policies, some have

---

<sup>1</sup> Mumford, Lewis. American Writer, 1895-1990.

<sup>2</sup> Shoup, Donald C The High Cost of Free Parking, Chicago: Planners Press, 2005, p. 4

enacted a fee that can be paid as an alternative to providing the required parking spaces. City zoning ordinances allow developers to pay a fee ranging from \$6,000-27,000 per required parking space. In-lieu fees expose the true cost of parking by assigning a cost to each space. In return, most cities use the revenue to develop public parking facilities. However, Los Angeles has the opportunity to direct the revenue towards access and public transportation, rather than escalate the existing and mounting disadvantages of parking.

Los Angeles is behind many comparable cities in parking reform. While leading researchers from Los Angeles have contributed extensively to the discourse surrounding parking policy alternatives and reforms, Los Angeles has yet to adopt a parking solution that not only benefits the city and its residents, but also places Los Angeles at the forefront of progressive transportation policies. While eliminating parking requirements completely would be the ideal policy reform, policy analysts acknowledge that parking reform will be an incremental and gradual process. The principal benefits of an in-lieu fee is the ability to reduce the number of new parking spaces that are developed without significantly altering Los Angeles' existing zoning ordinance.

### *Review of Current Research*

A review of current literature identifies a broad range of research surrounding ways in which cities have sought to utilize parking policies as a means to reduce traffic congestion and the number of drivers on the road. UCLA Urban Planning Professor Dr. Donald Shoup, arguably the leading academic and policy analyst for parking reform, has significantly contributed to research surrounding transportation and land use. His work focuses on the economic and environmental impacts on cities and has led to important reforms. His work related to employer-

paid parking successfully encouraged the passage of California's parking cash-out law, and subsequent changes in the Internal Revenue Code. Much of his research surrounding parking has also contributed to cities charging fair market prices for metered parking, which has led to increased revenues. Most notably, his book *The High Cost of Free Parking*, provides detailed research and recommendations on topics ranging from the creation of parking requirements and the myriad of urban planning problems that result, the circular logic related to planning for parking, the true cost of parking spaces, and alternative solutions such as in-lieu fees, car sharing and eco-passes. In this long (700 pages) and impressive volume, Dr. Shoup clearly outlines how urban planners have failed to acknowledge the impact of parking policies on cities.

While Dr. Shoup clearly leads the research field, other planners, journalists and academics have made notable contributions to parking reform and literature. Topics explored in journal articles include eliminating parking space for residential buildings, market rate metered parking, and the detrimental effects of poorly planned parking in downtown districts. Additionally city planning departments have conducted studies and offered recommendations for parking policy such as the Community Redevelopment Agency of the City of Los Angeles's report "Future Parking Supply and Demand," which provides projections for how city growth will affect the supply of parking in Los Angeles. Governmental agencies such as the Environmental Protection Agency (EPA) also influence city policies through various reports and studies. One such example is the EPA's report "Parking Spaces/ Community Places," which offers an analysis of alternative parking solutions through a best practices survey across the US. While these reports provide planners with valuable assistance, the studies typically do not reflect important factors that vary from city to city,, such as the quality of a city's alternative transportation system. Therefore planners must exercise caution when relying on such reports and consult a variety of



studies to see which are most applicable to the situation being reviewed.

Newspaper articles have provided the means for planners and policy advocates to spread general public knowledge about parking—a subject rarely addressed in politics. Many articles from sources such as The New York Times and The Los Angeles Times have highlighted elements of parking policy reform that can benefit cities such as increased revenue through market priced curb parking and reduced traffic congestion. Popular media such as online and print news draws attention to how a particular city can benefit from parking reform and consequently builds support to pass local reforms amongst residents.

After analyzing research on parking policies and alternative parking solutions, the study focused on a particular solution widely used by many cities, a minimum parking requirement in-lieu. The study therefore collaborated and assisted parking advocates and transportation activists in Los Angeles who have worked towards proposing an in-lieu fee policy to the City Council. The following research uses a proposal by the non-profit, Green LA’s transportation working group, as a basis for analyzing current implementation of the in-lieu fee policy.

### **Current Proposal for Parking Reform in Los Angeles**

#### *Green LA Coalition*

Green LA Coalition is a group dedicated to providing recommendations and policy research towards achieving environmental and economic justice in the City of Los Angeles.<sup>3</sup> The group is hosted through the Liberty Hill Foundation, from which it receives the majority of funding, and includes a wide array of environmental activists and analysts. Green LA collaborates works with mayoral appointees and provides city departments with environmental expertise that help shape City policies and programs. Currently Green LA’s transportation

---

<sup>3</sup> Liberty Hill. “Green LA.” [http://www.libertyhill.org/common/publications/Greenla/GREENLA\\_to\\_print.pdf](http://www.libertyhill.org/common/publications/Greenla/GREENLA_to_print.pdf)>

working group has prepared a proposal for the LA City Council that seeks to use parking policy as a means to reduce car dependency. The proposal, “A Parking In-lieu Fee for Access: Support for Transit Corridors in Los Angeles” addresses the City’s problems with parking while supporting alternative transit and access.

### *Green LA Parking Requirement In-lieu Fee Proposal*

Dr. Richard Willson, a professor at Cal Poly Pomona, prepared the parking requirement in-lieu fee proposal proposed by Green LA. The proposal seeks to adopt a parking policy familiar to those of many other cities. While similar to policies of other cities, Green LA’s proposal aims to achieve Los Angeles City Council motion CF# 07-2991-S1 for the Planning Department to “explore the feasibility of offering developers in transportation corridors the choice of reducing the amount of parking spaces they must build in exchange for a new Transit System Construction Fee.” The proposed parking reform utilizes previously practiced policies to achieve both a solution for parking and for the city’s need for investment in transit access.

The proposal defines access as “the full range of transportation options, including driving, carpooling, bus and rail, shuttles, taxis, walking, or bicycling.”<sup>4</sup> The flexible use of the dedicated funds reflects the varying access and transportation needs of the different neighborhoods throughout Los Angeles.

Keeping in mind that parking reform cannot be solved through drastic policy shifts, but rather through a gradual reform of the city’s transportation structure, the proposal offers options for both the city and developers in the applicability and use of the fee. Additionally, the proposal offers opportunities for participation of city departments and planners, local stakeholders, and

---

<sup>4</sup> Willson, Dr. Richard. “A Parking In-lieu Fee for Access: Support for Transit Corridors in Los Angeles.” Prepared for: *Green Los Angeles*. Draft: January 5, 2009, p. 1

community groups in shaping the specific policy requirements.

For example Green LA's proposal states that development proposals for any land use within one-half mile of a major transit hub may choose to comply with the in-lieu fee to reduce the total parking spaces to be built. Developments may reduce the total required parking spaces by up to 25% without discretionary approval, or must receive Zoning Commissioner's approval if reducing the parking by more than 25%. Therefore the proposal not only allows the fee to be fully optional for developers, it also ensures that communities will not be depleted of their parking stock by requiring the Zoning Commissioner's approval for large parking reductions. Additionally, in the "Parking In-lieu for Transit Issue Paper," Willson identifies key issues for city council considerations that may ultimately change specifics in the policy to best suit the city's different areas. One consideration refers to the discretion as to whether to use the in-lieu fee. The paper states, "developers opting to use the in-lieu provisions could be by right or at the Zoning Administration's discretion based on study or local plan" and that the fee "can apply to a single land use zoning category or all zones in an area."<sup>5</sup> As a result the varied nature of Los Angeles communities can be addressed by incorporating the concerns of different interest groups to achieve a policy that benefits not only transportation but also local communities.

The collection and use of funds, while focusing on access, allows for uses that incorporate transit, pedestrian improvements, and improvements to public on- and off-street parking. The proposal declares "the fees collected are kept in a separate access fund that is dedicated to access improvements within a one-half mile radius of the transit station area."<sup>6</sup> The proposal distinguishes between how funds will be used in areas with more or less than five developments opting for the in-lieu fee. For example in transit areas with five or more developments utilizing

---

<sup>5</sup> Willson, p. 7

<sup>6</sup> Willson, p. 8

the in-lieu fee in any two-year period, an Access Plan will be prepared by the City Planning and Transportation departments in order to properly “analyze needed transportation improvements and prioritize access improvements such as transit bicycle, walking, shared ride...” in order to cater to the specific needs of neighborhoods while successfully supporting the use of transit, walking, bicycling and so forth.

Other specifics in the proposal include the amount of fee, and the implementation of improvements and programs. To provide an incentive for developers to use the in-lieu fee option, the proposal sets the amount at \$20,000 per parking space foregone (substantially less than the current cost of construction per space), which amount is increased on an annual basis. The implementation of improvements paid from the access fund will rely on Access Plans in Transit areas and be tasked to the various city departments such as Transportation, Planning, and Engineering. By emphasizing the varied transit needs throughout Los Angeles along with the need for stakeholder involvement, Green LA’s proposal effectively seeks to reform parking in Los Angeles while benefiting the city and supporting access modes.

### *Summary of Proposal’s Analysis*

In addition to providing an in-depth explanation of the proposal, Professor Willson provides an analysis of the revenue potential and on-street parking management in the “Parking In-lieu Fee for Transit Issue Paper.” By setting the level of development at 2.1 million square feet of commercial development and 1,000 housing units per year, gross revenue from the in-lieu fee can be totaled for different land uses. Retail alone will generate \$10,000,000, office \$5,000,000, residential \$1,875,000, and restaurant \$2,500,000 per year.<sup>7</sup> Professor Willson also

---

<sup>7</sup> Willson, p. 9

points out that on-street parking management must include time and/or pricing changes that increase the cost and availability of spaces. Additionally there must be control over the parking demand in residential districts through such means as permits and time limits.

### *Research's Contribution to Parking and Access Policy*

This report seeks to contribute to parking policy reforms not only in Los Angeles, but nation-wide. By using Green LA's proposal as a foundation for the research, the report expands on how Los Angeles should adopt an in-lieu fee by reviewing how the policy has been utilized in other cities. The report updates Dr. Shoup's 1996 best practices survey of cities using in-lieu policies in order to update the general research on the policies, and to expand on how different criteria has shaped the effectiveness of the policy in various cities. Additionally the report analyzes how by dedicating the in-lieu fee revenue towards transit access, Los Angeles can promote sustainability and alternative transportation while simultaneously reforming the city's parking systems.

Previous best practice studies have highlighted the success of utilizing in-lieu fee revenue or public parking structures and improving urban design by allowing developers to opt out of building parking structures. However the policy varies from city-to-city in the ways in which it dictates parking reform. Therefore the report identifies criteria based on how the policy has been utilized to provide recommendations on implementing sustainable and effective in-lieu policies. The collection of criteria found effective for cities currently using in-lieu fees will not only assist Los Angeles in its efforts to reform parking, but also other cities seeking recommendations on how to improve their current parking policies.

**Chapter 2: History of Parking and US Car Culture:**

*“When Solomon said there was a time and place for everything he had to encountered the problem of parking his automobile.”<sup>8</sup>*

- Bob Edwards

As car ownership increased in the mid-1900's and on-street parking became scarce, urban planners in Los Angeles, and many other American cities, established minimum parking requirements. Such policies generally require that each new development provide a minimum number of parking spaces based on the demands related to the specific land use. For example, parking for office buildings is determined by total square footage, while the number of housing units determines residential parking requirements. By providing parking that would satisfy peak demand, urban planners encouraged people to drive more, with the assurance that free parking would be available. An abundance of free parking therefore lowers the market price of parking, which in turn provides a subsidy for parking that inflates the actual demand for parking. As a result, parking demand continues to increase, congesting city streets and creating various urban problems such as congestion and sprawl. Planners then react by requiring ever-increasing amounts of parking. Therefore urban planners have set forth a system where, as Dr. Shoup points out, “Parking requirements are expected to solve the problems they create.”<sup>9</sup> Incorporating new policies that begin to reduce the amount of parking required by developers can reverse the cycle of destructive parking policies. By implementing effective parking policies and zoning, Los Angeles can reduce congestion and car use, generate revenue, increase alternative transportation use, reduce pollution, and revive the central business district's economy and urban design by encouraging more pedestrian traffic.

---

<sup>8</sup> Edwards, Bob. American Radio Host.

<sup>9</sup> Shoup, “The High Cost,” p. 130

### *Driving and Parking in America*

The cost and negative externalities produced from parking, dates back to the emergence of the automobile in American culture in the 1920's. The U.S. was the first country to produce and popularize cars on a large scale. In 1906 the first cars were sold only to the very wealthy. There were few roads and the cars imposed little impact on society. However by 1910 Henry Ford was selling 45,000 cars per year. By reducing the purchasing price he created a 'car for the masses' that even his own employees could afford on a living wage.<sup>10</sup> As cars became more affordable they began flooding the streets, filling roadside spaces previously reserved for horses and bicycles. By the end of the 1920's there were over 20 million cars registered in the U.S. that demanded not only roads to drive in but also space for storage.

The first conflict surrounding traffic in Los Angeles surfaced between the new automobiles and the streetcars, which now had to compete for street access and parking spaces. To address the problem the LA City Council was persuaded by streetcar companies to enact a downtown automobile-parking ban off 300 square blocks during 11am and 6:15pm daily.<sup>11</sup> However a marriage had already formed between key business leaders and the automobile industry. Immediately downtown business interests contested the ban, declaring that it would destroy downtown retailers. Once the short-lived ban was lifted, congestion returned to the urban core, eventually making streetcar transportation impractical by the 1950's.

Other cities experienced similar problems from the influx of automobiles. The first parking requirements were introduced for apartment houses in Columbus Ohio, in 1923, and the parking meter was developed in 1933.<sup>12</sup> By 1946, 70 cities had adopted parking requirements. A decade later with the expansion of the interstate system and a pervasive car culture, most cities

---

<sup>10</sup> Wolf, Winfried. Car Mania: A Critical History of Transport. Chicago: Pluto Press. 1996, p. 70

<sup>11</sup> Gottlieb, Robert. Reinventing Los Angeles. Boston: MIT Press, 2007, p. 201

<sup>12</sup> Gottlieb, p. 201



had incorporated parking requirements into their zoning.<sup>13</sup> From drive-in movie theaters and restaurants to the development of massive shopping malls, Americans needed more and more places to store their cars throughout the day.

### *Failure of Transportation Policies*

The demand for parking went hand-in-hand with the newly emerging car culture that was driven by a series of federal policies that promoted automobiles and transportation spending for development of highways. The 1950's Federal Interstate Highway Act divided neighborhoods, promoted sprawl and aided in the middle class flight from the urban core. Additionally, low mortgage rates and deteriorating inner cities encouraged middle class families to leave dense cities for the suburbs. This not only created today's problems associated with sprawl, but also developed an economic gap between the cities and suburbs.<sup>14</sup> By encouraging automobile use and requiring ample parking, planners inadvertently continued to increase the demand for parking throughout the twentieth century that cities like Los Angeles are only now beginning to address.

Understanding the failures of how American reacted to the automobile explosion not only aids in solving problems, but also assures that other cities properly design their transportation systems to avoid similar mistakes. The high demand for cars in the twenty-first century has been aided by factors such as low fuel practices, land availability, and new post-war prosperity and consumer culture. The U.S. has the highest vehicle ownership rate in the world, amounting to

---

<sup>13</sup> Kay, Jane H. "A Brief History of Parking: The Life and After-life of Paving the Planet." Jane Holtz Kay. 20 Oct. 2008.

<sup>14</sup> Gottlieb, Robert, Regina Freer, Mark Villianatos, and Peter Dreier. The Next Los Angeles. Los Angeles: University of California Press, 2005, p. 104 & 134.

771 motor vehicles per 1,000 persons.<sup>15</sup> If trends continue there will be over 4.7 billions cars in the world before the end of the twenty-first century.<sup>16</sup> Therefore the ways in which cities control automobile use will continue to plague planners as problems associated with parking continue to intensify.

### **Chapter 3: Background: Minimum Parking Requirement**

---

<sup>15</sup> Shoup, "The High Cost," p. 4

<sup>16</sup> Shoup, "The High Cost," p. 6

*“In the future we will look back at minimum parking requirements as a colossal mistake.”<sup>17</sup>*

- Donald Shoup

*Minimum Parking Requirement’s Negative Destruction:*

*“My father never paid for parking, my mother, my brother, nobody...It’s like going to a prostitute. Why should I pay when, if I apply myself, maybe I could get it for free?”*

- George Costanza on Seinfeld

Urban planners across America have created a culture that not only depends on automobiles, but also often requires them. Since 1923 planners have implemented minimum parking requirements for different land uses. The policy requires that developments satisfy a minimum number of off-street parking spaces depending on its size and land use type. Planners determine the number of spaces by factors such as the total square footage, number of units, or other measurements. While planners depend on minimum parking requirements to satisfy parking demand, encourage commerce and reduce congestion—the policy encourages more driving, raises construction costs, and increases traffic. By inadequately calculating the actual demand for parking, the policies force developers to provide an over-abundance of parking with negative costs for society.

Despite cities’ strong reliance on minimum requirements, there is little evidence pointing to the origin of the calculation methods. In 1996 Professor Richard Willson surveyed 144 different local jurisdictions’ parking requirements. When planners from the jurisdictions were asked about how they set specific parking requirements, the most common answers were “survey

---

<sup>17</sup> Shoup, “The High Cost,” p. 64

nearby cities” and “consult Institute of Transportation Engineers (ITE) handbooks.”<sup>18</sup> While ITE publications contain systematic data, the results are often faulted for poor survey methods and inflated calculations.

While planners rely on ITE publications to determine parking policies, the methods used by ITE fail to distinguish between cities and suburbs, leading to impractical parking requirements in urban areas. To identify parking requirements planners calculate the peak demand for parking and subsequently require a supply of at least that amount. ITE reports publish parking generation rates, which is defined as “the average peak parking demand observed in case studies.”<sup>19</sup> However the conditions in which the case studies are observed cause inaccurate and inflated generation rates. Peak demand is measured by assuming a supply of free parking, without regard to potential or hidden costs. Data is primarily collected at suburban sites with ample supplies of free parking, and limited public transit.<sup>20</sup> Additionally, Dr. Shoup found that half of the parking generation rates are based on four or fewer studies, and 22 only cited a single case study.<sup>21</sup> The calculations are impractical for use in urban areas where garages and curb parking charge fees. Additionally, the surveys do not provide information on methodology such as the length, location, and time frame of peak demand.

Cities generally provide different parking requirements for specific land uses such as movie theaters, gyms, and apartments. ITE calculates requirements for land uses that are based on trip generation rates, defined as “the number of vehicles trips that begin or end at a land use

---

<sup>18</sup> Wilson, R., 1996. Local jurisdiction parking requirements: a survey of policies and attitudes. Working Paper, Department of Urban and Regional Planning, California State Polytechnic University, Pomona, California.

<sup>19</sup> Shoup, Donald. "The High Cost of Free Parking," *Journal of Planning Education and Research*, Vol. 17, No. 1, Fall 1997, p, 4

<sup>20</sup> Institute of Transportation Engineers. 1987. Parking Generation. 2<sup>nd</sup> edition. Washington, DC: Institute of Transportation Engineers, vii, xv

<sup>21</sup> Shoup, “The High Cost,” p. 4

during a given period.”<sup>22</sup> Similar to parking generation rates, the surveys for trip generation rates cite only a few studies performed at sites located in suburbs with free parking. The trip generation rates produced by ITE are subsequently inflated because “vehicle trip demand is higher where the price of parking is lower.”<sup>23</sup>

Parking and trip generation rates are not only misleading, but also use related values to express the results. Both rates are expressed per 1000 square feet measurements. However through assessing the variation in rates, floor area accounts for less than 4% of parking generation rates and 7% of trip generation rates.<sup>24</sup> Planners depending on ITE generation rates fail to acknowledge that the data, while appearing scientific, is in fact misleading.

Problems with city parking ordinances can be traced back to the shaky basis on which planners attempt to calculate requirements for different land uses. The circular logic perpetrates impractical requirements as most city planners look at other cities as examples on which to base their requirements. The incorrect assumption that other cities have accurately calculated parking requirements results in repeating other cities’ mistakes. As explained, other cities’ faulty ordinances result from ITE’s inflated *Parking Generation* and unsubstantiated estimates by planners. Without alternatives to ITE’s data that appropriately relates peak parking demand to land use, planners choose to base ordinances on what appears to be systematic data. Therefore planners continue to develop parking requirements that fail to accurately reflect the reality of parking for different land uses and local requirements.

The opportunity cost of the land lost to parking, the number of required parking spaces, and the cost per parking space, all determine the financial cost of satisfying the minimum

---

<sup>22</sup> Shoup, Donald C, "The Trouble with Minimum Parking Requirements," *Transportation Research Part A*, Vol. 33A, Nos.7-8, September/November 1999, pp. 549-574, p. 553

<sup>23</sup> Shoup, "The Trouble with Minimum Parking Requirements," p. 553

<sup>24</sup> Shoup, "The Trouble with Minimum Parking Requirements," p. 553

parking requirement. The opportunity cost of the foregone land frustrates many developers who would otherwise use the space for a use with higher value such as residences. In dense urban areas such as downtown Los Angeles, where land is less abundant and more expensive, required parking poses a larger financial cost.

In *The High Cost of Free Parking* Shoup asserts that “the cost of all parking spaces in the U.S. exceeds the value of all cars and may even exceed the value of all roads.”<sup>25</sup> The actual financial cost of a parking space is important in understanding the implications that parking policies have on urban planning. The cost of providing parking can be found by calculating the estimated cost that each space adds to the development. For example if a parking structure is constructed on land that was previously a surface lot, the number of additional spaces provided by the structure represents the opportunity cost of using the land.<sup>26</sup> However this method values the land as a surface parking lot. If by adding parking spaces sacrifices land that could have been used for alternative uses such as more housing units, or increased office space, the value of the parking spaces increases dramatically.

Most developments in downtown Los Angeles satisfy parking requirements through underground parking, due to the high value and scarcity of land. Through various case studies at UCLA, the average cost for underground parking is \$25,000 per space.<sup>27</sup> Using an office building as an example, Los Angeles zoning requires four spaces per 1,000 square feet of floor area. Therefore, multiplying the number of required spaces (4) by the cost of each space (\$25,000) produces the total cost of \$100,000 for four parking spaces. Dividing the \$100,000 cost by 1,000 square feet reveals that the required parking costs \$100 per square foot of floor

---

<sup>25</sup> Shoup, “The High Cost” p. 185

<sup>26</sup> Shoup, “The High Cost” p.186

<sup>27</sup> Shoup, “The Trouble with Minimum Parking Requirements,” p. 556

area for an office building.<sup>28</sup> This permits a developer to calculate the cost associated with providing parking for the development. In Los Angeles the average cost of construction is \$150 per square foot.<sup>29</sup> Dividing the cost per square foot of parking by the cost of construction per square foot (\$100/ 150sq ft) shows that providing parking for an office building in Los Angeles increases the totally cost of the building by 67%.

Minimum parking requirements therefore places the cost of parking on the developers, rather than the drivers. This externalizing of parking costs has continued to provide ample parking, at little or no cost to drivers, which encourages driving, traffic and less public transportation ridership.

City planners have depended on unreliable surveys and trip generation rates to develop zoning ordinances. Despite evidence pointing to the negative effects and impracticality of minimum parking requirements, alternative strategies have been slow to develop. While minimum parking requirements provide parking for employees, consumers, and residents—excess parking increases the number of parking spaces and automobiles in central business districts (CBD). More parking encourages more driving, and in turn produces traffic congestion that adds to pollution.

*Traffic Congestion & Disincentive for Public Transportation:*

*“When I get real bored, I like to drive downtown and get a great parking spot, then sit in my car and count how many people ask me if I’m leaving.”<sup>30</sup>*

- Stephen Wright

---

<sup>28</sup> Shoup, "The Trouble with Minimum Parking Requirements," p. 556

<sup>29</sup> Los Angeles County Assessor

<sup>30</sup> American Actor and Writer, b. 1955

Minimum parking requirements have been used as a reactive measure by policy makers to reduce problems associated with traffic congestion and limited on-street parking. Spillover parking occurs when off-street parking cannot satisfy the demand, forcing drivers to cruise looking for a space, and park in nearby neighborhoods. Many planners argue that without minimum parking requirements, drivers would flood neighborhood streets. Therefore to solve spillover issues, planners require developers to simply provide more off-street parking. However, by ignoring the immediate causes of spillover parking, on-street curb parking in the central business district (CBD) has in fact increased levels of traffic congestion, wasted fuel, reduced walkability, and caused automobile accidents.

Drivers are more likely to cruise for parking if it is cheap, off-street alternatives are more expensive, they want to park for a long time, and/or if they are driving alone.<sup>31</sup> Studies in New York City and Los Angeles have reported that cars searching for parking is a major source of gridlock. In a yearlong study it was found that within a 15-block business district, cruising for curb parking resulted in 950,000 extra miles driven, consuming 47,000 gallons of gas that contributed 730 tons of greenhouse gas carbon dioxide.<sup>32</sup> In addition to the environmental and public health effects of pollution, cruising creates traffic congestion, especially at peak times.

Surveys in various cities have noted that “cruising for curb parking generates about 30% of the traffic in central business districts.”<sup>33</sup> Traffic problems cannot be solved through urban planning alone—because driving and parking are directly related, solutions must address the economic factors tied to parking. While time and fuel are wasted in the search for on-street

---

<sup>31</sup> Shoup, Donald C. “Cruising for Parking,” *Transport Policy*, Vol.13, No.6, November 2006, p.480

<sup>32</sup> Au, Ceri. “The New Science of Parking.” *Time Magazine*. *TIME*. 9 July 2007.  
<<http://www.time.com/time/nation/article/0,8599,1641244,00.html>>.

<sup>33</sup> Shoup, Donald C. “Gone Parkin” *The New York Times* 29 Mar. 2007: 25



parking, drivers will continue to cruise unless the curb-side meter rate is higher than the price of off-street alternatives.

In most cities, curb parking is less expensive than parking garages, providing incentive for drivers to clog streets while searching for coveted curbside spaces. Shoup examines on- and off-street parking prices in 20 different cities in his 2006 report “Cruising for Parking,” in order to examine the incentives to cruise. The study identifies that while the average hourly rate for curb parking was only \$1.17, off-street parking averaged \$5.88.<sup>34</sup> Cruising ended up saving the most money for drivers in New York City, but only cost drivers in two cities—Palo Alto and San Francisco. Among the 20 cities, curb parking was only 20% of the price of parking in a garage. Shoup points out that people would complain “if long lines of cars regularly spilled into the streets and congested traffic because the lots and garages were always full.”<sup>35</sup> However, alternatively, people complain about traffic that results from cities failing to accurately price public curb parking.

Since 1952 various studies have offered economic solutions to reduce congestion through parking reforms in the CBD. In 1996 William Vickery won the Nobel Peace Prize for his idea of congestion pricing to relieve congestion in New York City. Cities could raise off-street parking to meet the market price, so fewer drivers would decide to cruise for parking. Shoup supports this idea and argues that market pricing should create an 85% occupancy rate for curb parking so that drivers willing to pay those prices are able to quickly find available spaces without contributing to traffic.<sup>36</sup> Market priced parking as a solution not only reduces traffic congestion, but also benefits cities and neighborhoods by providing increased revenue.

---

<sup>34</sup> Shoup, “Cruising for Parking,” p. 481

<sup>35</sup> Shoup, “Cruising for Parking,” p.483

<sup>36</sup> Au, Ceri

*Revive Pedestrian-Friendly Urban Cores:*

“We suspect that when the density of cars passes a certain limit, and people experience the feeling that there are too many cars, what is really happening is that subconsciously they feel that the cars are overwhelming the environment, that the environment is no longer “theirs,”... When the density goes beyond the limit, we suspect that people feel the social potential of the environment has disappeared.”

- Alexander, Ishikawa, Silverstein. *A Pattern Language*

Central business districts (CBD) provide numerous advantages for a city’s economic, social, and cultural activities. Downtown Los Angeles’s proximity of sports areas, museums, civic centers, office buildings, restaurants, and shopping, offers patrons a variety of resources. However parking reduces density—the very aspect of the CBD that makes it desirable. Parking requirements also discourage walking because drivers can visit multiple locations in the CBD and be assured that parking will be found, rather than parking in a central location and walking or taking public transportation between destinations. Lastly, as new developments supply more parking, and increase construction costs, the CBD becomes overwhelmed with unattractive parking structures that take away from the area’s culture and urban design. Richard Voith points out in his study of CBD density and parking requirements that “Effective parking policies, therefore, must strike a balance between convenient parking and maintenance of the dense urban fabric that makes the CBD unique.”<sup>37</sup>

As Dr. Shoup points out, “parking requirements are expected to solve the problems they create.”<sup>38</sup> Parking requirements create a circular cycle where the decline in urban density leads to an increase in suburban sprawl, which in turn leads to a less lively CBD. As a result there is a

---

<sup>37</sup> Voith, Richard. “The Downtown Parking Syndrome: Does Curing the Illness Kill the Patient?” Federal Reserve Bank of Philadelphia Business Review, January/February 1998, p. 4

<sup>38</sup> Shoup, “The High Cost,” p. 130

decline in public transit, a rise in car ownership, and lastly an increase in vehicle travel, which fuels the decline of urban density. Due to the importance of density, parking requirements become detrimental to the success of a CBD.

Urban density declines with land designated for parking rather than people, lower transportation costs, and higher construction costs—all of which result from parking requirements. Due to the high value of property in the CBD, parking requirements create disincentives for construction in urban cores. In Los Angeles the parking requirement is uniform across the entire city, regardless of the existing density, transportation access, or the concentration of commercial buildings. As a result, developers are encouraged to seek areas outside of the CBD, where land has lower value, in order to comply with the ordinance.

Parking reform has the potential to renew urban cores and improve the walkability of downtowns. However zoning ordinances, such as Los Angeles's minimum parking requirement, promote the accessibility and availability of parking, over the quality of the urban design. Current parking requirements supply downtown Los Angeles with architecturally mundane parking structures that disrupt the streetscape. The high cost of supplying parking is frequently enough to dictate the architectural quality and urban design of a neighborhood. While ordinances currently specify the amount, size, and even angle of spaces, they do not impose regulations on the design or location of the parking structures.

Alexander, Ishikawa, and Silverstein write in *A Pattern Language* of the dichotomy of cars and humans' relation to their environment. The authors explain that the environment should “create the potential for all social communion, including even communion with the self.”<sup>39</sup> However, when the density of cars becomes too great “the environment starts giving them the

---

<sup>39</sup> Alexander, C., Ishikawa, S., & Silverstein, M. (1977). *A Pattern Language*. New York: Oxford University Press, p. 122

message that the outdoors is not meant for them...that social communion is no longer permitted or encouraged.”<sup>40</sup> In the CBD where the built environment already dominates, it is even more critical to create areas of social interaction outside of buildings. These areas can be created by reducing the amount of parking and reforming the way parking determines urban design. The few cities that prohibit off-street parking, such as in Carmel, California, pedestrians benefit from a unique streetscape with less traffic from cars seeking parking.<sup>41</sup> Without a parking culture, Carmel has been able to preserve its historic culture through architecture and neighborhood design.

A reduction or elimination in parking requirements will help revive central business districts by improving the walkability of streets. Sidewalks become more welcoming without gaps for parking lot entries. Additionally, if each building does not contain its own parking, people will park once, and be forced to walk along the streets to their destinations. The location of parking is also important in accommodating pedestrian life. By avoiding parking structures in front of buildings, lining sidewalks, or even breaks in the sidewalk for cars to enter structures, allows buildings to be oriented to the sidewalk.<sup>42</sup> Access to the street is emphasized, while reducing automobiles’ interference with pedestrians. Bringing people onto the streets not only encourages social engagements, but also benefits businesses as the sidewalks bring pedestrians directly to storefronts, rather than to an underground garage.

Urban areas can also reclaim the character of the neighborhood by focusing on design of rather than purely the supply of parking structures. Developers face challenges in creating parking structures that satisfy the parking requirement while simultaneously contributing to the

---

<sup>40</sup> Alexander, C., Ishikawa, S., & Silverstein, M, p. 122

<sup>41</sup> Vinit Mukhija and Donald Shoup, “Quantity versus Quality in Off-Street Parking Requirements,” *Journal of the American Planning Association*, Vol. 72, No. 3, Summer 2006, p.297

<sup>42</sup> Vinit Mukhija and Donald Shoup, p. 298

area's urban design. Strategies to improve the aesthetics of parking, despite the existing parking requirements, can be achieved through landscaping and creative locations such as dropping the lots below street grade.<sup>43</sup> Unfortunately, as Shoup points out, "private economic incentives for good parking design are weak,"<sup>44</sup> and developers rarely see the design of parking structures as a means to increase the development's value. Therefore most developers supply the minimum required parking at the lowest cost possible—contributing to an unattractive streetscape lacking cohesion.

Other parking reforms that produce revenue for the city work towards revitalizing and improving central business districts. Currently under-priced curb parking has failed to provide benefits to the neighborhoods. Many reason residents in dense areas support parking requirements because of their fear that without an ample supply of parking, spillover will fill their neighborhoods. However if the meters were appropriately priced, and residents were given permits, neighborhood streets would remain free of congestion. Cities that fail to appropriately price on-street parking are not only congesting streets, but also foregoing potential city revenue from increased meter parking prices. By increasing the cost of on-street parking the city could use funds to revitalize the streetscape, returning urban cores to a pedestrian-friendly community.

Los Angeles's greatest example of minimum parking requirement's ability to dictate poor urban design can be found in the famous Disney Concert Hall located downtown. The underground six-level, 2,188-space parking garage cost \$110 million to construct—enough to put its financier, Los Angeles County, in debt.<sup>45</sup> While the garage was completed in 1996, the concert hall did not open until 2003. The delay reduced expected parking revenues. As a result,

---

<sup>43</sup> Vinit Mukhija and Donald Shoup, p. 299

<sup>44</sup> Vinit Mukhija and Donald Shoup, p. 300

<sup>45</sup> Michael Manville and Donald Shoup, "[People, Parking, and Cities](#)," *Access* No. 25, Fall 2004, p. 6

the Disney Concert Hall is required to hold at least 128 concerts each year. One hundred and twenty eight is the calculated number of events needed to render enough parking revenue to repay the debt procured from constructing the garage.<sup>46</sup> Initially the parking facility was built to satisfy poorly planned parking requirements. However now the parking supply determines the concert hall's minimum concert requirement.

The Disney Concert Hall's failure to revive the city's urban core and achieve the original architectural plans continues to exemplify the negative effects of parking requirements. Since developments must provide their own parking, concert-goers enter the hall through the garage, never setting foot on the sidewalk.<sup>47</sup> This way the concert hall fails to benefit central business district by neglecting local restaurants of potential customers. The high cost of parking affected architect Frank Gehry's original design. To save money, the limestone he originally specified was changed to cheaper stainless steel. In order to comply with the city's minimum parking requirement the Disney Concert Hall's over all design and eventual use was determined not by an architect or an orchestra—but by parking.

#### *Parking Requirement's Effect on Affordable Housing:*

As housing prices increase and cities move towards promoting high-density urban development, minimum parking requirements have been criticized as posing an obstacle for both affordability and high-density. The concept that parking requirements reduce housing density and increase the cost of housing has existed since the first parking reforms. In 1964 Wallace Smith completed a study of housing costs in Oakland, California. His finding discovered that following the 1961 zoning ordinance for off-street parking, housing construction costs rose 18%.

---

<sup>46</sup> Michael Manville and Donald Shoup, p. 6

<sup>47</sup> Shoup, Donald C. "San Francisco and L.A.: Parking Makes the Difference." *Journal of the American Planning Association*, Vol. 71, No.1, Jan 2005, p.37

In addition, the supply of housing decreased by 30% per acre.<sup>48</sup> The report explains that density of housing fell because expensive underground garages were required in order to maintain the same levels of density while supplying the required amount of parking for the ordinance.<sup>49</sup> Also, since the requirement was based on the number of units, rather than square footage, developers preferred to build fewer, larger units. Therefore minimum parking requirement's negative effect on housing supply portrays once again how parking requirements dictate urban planning, design, and finance.

Affordable housing developers, more than any other constituent in Los Angeles, have been most challenged by parking requirements. Advocates for affordable housing claim that complying with parking requirements consumes government subsidies and reduces their capacity to provide housing units and incorporate mixed-use components. The Southern California Association of Non-Profit Housing's report, "Parking Requirements Guide for Affordable Housing Developers" argues that because of the strong correlation between income and vehicle ownership, residents in affordable housing units are less likely to require even one parking space. Additionally, in dense areas serviced by transit, such as downtown Los Angeles, the need for parking among low income residents decreases.<sup>50</sup>

Los Angeles' municipal code provides that in calculating affordable units the "density shall be rounded upwards from fractions of one-half...to allow one additional dwelling unit."<sup>51</sup> Therefore larger dwellings can comply with the same parking requirements as smaller units. However this still requires developers to build parking structures with at least one space per unit.

---

<sup>48</sup> Shoup, Donald C. "An Opportunity to Reduce Minimum Parking Requirements," *Journal of the American Planning Association*, Vol 61, No. 1, Winter 1995, p. 25

<sup>49</sup> Shoup, "An Opportunity to Reduce Minimum Parking Requirements," p. 25

<sup>50</sup> Dhondrup, Robert. Parking Requirements Guide for Developers. Rep.No. Southern California Association of Non-Profit Housing. 2007, p.3

<sup>51</sup> City of Los Angeles Municipal Code. Chapter 1, General Provisions & Zoning. Section 12.22 A25(d)

The demand for housing in Los Angeles cannot afford to comply with pricey parking requirements. In order to meet population growth expectations, Southern California must build 220,000 housing units a year for the next 23 years.<sup>52</sup> However, as the cost of constructing housing and the required parking rises, minimum parking requirements will start to play a role in determining the region's growth.

*Obstacle to Historic Preservation in Los Angeles's CBD:*

Developers choosing adaptive use and historic preservation in many of downtown Los Angeles' buildings are confronted with the challenge of satisfying the parking requirement for buildings without existing parking structures. As a result, many historic buildings are demolished or drastically altered in order to comply with current standards. Disincentives to preserve and rehabilitate historic buildings prevent urban areas from maintaining a part of its history through its unique design. For example, downtown Los Angeles' retail district that was destroyed in the 1992 Los Angeles riots has not been successfully rehabilitated due to the inability to accommodate parking. Consequently, the area has deteriorated and remains vacant, subject to high levels of crime for many of the narrow plots.

*Parking Requirement's Detrimental Effect on Pollution and Public Health:*

Minimum parking requirements provide ample off-street parking, often free of charge. However the external costs for each parking space increases car use, traffic, and subsequently impacts the environment and public health with added air pollution. Los Angeles' air is the worst in the nation, largely due to high car ownership rates and urban sprawl. If the city is to

---

<sup>52</sup> Dhondrup, Robert, p.3.



achieve its target of reducing greenhouse gas emissions by 35% below 1990 levels by 2030,<sup>53</sup> parking requirements must reflect efforts to reduce the effects of pollution. With this view, public officials must begin to acknowledge parking policies as a public responsibility.

While drivers park for free 99 percent of the time, they are additionally subsidized for the daily cost of commuting to work through employer-paid parking made possible with minimum parking requirements. Since office buildings in Los Angeles are required to provide four spaces per 1,000 square feet of floor area, employees readily use the excess parking. The California Air Resources Board found that employer-paid parking increases gasoline consumption by 33% in downtown Los Angeles. It also increases the parking demand by 34%, which artificially makes it seem that downtown needs more parking.<sup>54</sup>

In areas that employees would have to pay daily parking rates, employer-paid parking also subsidizes the cost of gas and encourages driving that increases pollution. For example, an employee drives 20 miles to work, where garages typically charge an average of \$5.64 a day; therefore the subsidy of \$5.64 that the employee receives covers the operating cost of a car, including gas, oil, maintenance, and tires.<sup>55</sup>

Urban sprawl and congestion, which can be partially attributed to parking requirements, increase driving time and in turn increase the emissions from automobiles. The external costs of pollution are especially important in Los Angeles where pollution and congestion levels are the highest of any downtown in the world. In cities with less pollution and congestion, the externalities of pollution are lower.<sup>56</sup> By using the South Coast Air Quality Management

---

<sup>53</sup> City of Los Angeles, "Green LA: An Action Plan to Lead the Nation In Fighting Global Warming." Mayor Antonia R. Villaraigosa, May 2007, p.3.

<sup>54</sup> Shoup, Donald C., Wilson, Richard. "Commuting, Congestions, and Pollution: the Employer-Paid Parking Connection." Working Paper, no. 120. The University of California Transportation Center, Presented at the Congestion Pricing Symposium; June 1992, p.9

<sup>55</sup> Shoup, "The High Cost of Free Parking," *Journal of Planning Education and Research*, p. 12.

<sup>56</sup> Shoup, "The High Cost," p. 198

District's vehicle emission values, the emissions created by vehicles per space can be calculated for a specific parking structure. Shoup's study of UCLA's 1,500-space parking structure took into account vehicle miles traveled, congestion, and emissions cost per parking space to find the total external cost per parking space of \$110.86. The emissions cost per space was calculated to \$44 per month.<sup>57</sup> Increasing the number of parking spaces has other environmental impacts that are less easily monetized, such as an increase in storm water runoff, and a reduction in potential green space for oxygen producing plants.

#### **Chapter 4: Reform for Los Angeles**

---

<sup>57</sup> Shoup, "The High Cost" p. 197

### *Importance of Parking Policy as Public Responsibility*

*“What is the primary purpose of a political leader? To build a majority. If [voters] care about parking lots, then talk about parking lots.”<sup>58</sup>*

- Newt Gingrich

In order for cities to view parking as a public responsibility and initiate appropriate reforms, it is essential to identify the importance of parking in dictating how a city functions. Providing off-street parking for each development guarantees drivers convenient and often free parking, and therefore encourages car use. This increase in automobiles on the road is only the start of the problems generated by minimum parking requirements.

Moving away from the impractical nature of parking requirements and towards alternative solutions will contribute by enabling Los Angeles to achieve its overall goals towards growth and redevelopment. While many officials argue that minimum parking requirements are necessary for retail to thrive and employees to commute—they must also evaluate their public responsibility to securing the city’s growth and public health. While acknowledging that parking is required for a variety of activities, decision-makers must also account for the variety of needs involved with different land uses and areas. By looking towards alternative parking solutions Los Angeles will be able to provide for the specific parking needs of its neighborhoods and avoid both an over and under supply of parking.

Policies that encourage Smart Growth principals such as compact building design, walkable neighborhoods, alternative transportation choices, and cost-effective development

---

decisions, are all strategies that benefit cities and lead to a reduction in air pollution. Effective parking strategies also reduce the amount of land consumed by developments and increase the walkability of communities. Most importantly, alternative solutions such as an in-lieu fee generate much needed revenue for a city. In addition to the new revenue, cities will reduce spending as a result of an overall reduction in public health and development funding. Currently Los Angeles's parking policy is a barrier to effective redevelopment in the city. The City Council must understand the potential benefits that an in-lieu fee can provide in order to achieve future goals and ensure the sustainability of the city.

### **Reform for Los Angeles: Parking Requirement In-Lieu Fee**

While other nearby cities such as Beverly Hills, Pasadena, San Diego, and San Francisco have implemented parking policies that limit rather than expand parking, Los Angeles has yet to reform minimum parking requirements that continue to burden the city. In 1996 and updated again in 2002 Dr. Shoup surveyed 24 American cities and various international cities with in-lieu fees. In his survey he interviewed city officials and examined city ordinances and documents to find the benefits and downfalls of in-lieu fees, as well as the specifics such as the fee amount and applicability. The following compares Green LA's proposal to the findings in Dr. Shoup's report.

#### *Benefits of In-Lieu Fee Proposal:*

By placing an actual cost for the required parking, an in-lieu fee makes the cost of parking explicit and concrete, forcing developers to confront the reality of constructing parking. Because the in-lieu fee is substantially lower than the in-lieu fee per space, the option provides developers

with an incentive to reduce the number of spaces provided.

Many developers struggle with the high cost of providing required parking. Additionally, as previously explained, parking requirements often hinder the architecture, urban design, and historical preservation of developments. The cost and amount of space required to construct parking often deter developers from achieving their proposed design, such as with the Walt Disney Concert Hall downtown. An in-lieu fee will provide an alternative to constructing large amounts of parking, allowing areas such as downtown to improve the streetscape and urban design.

Developers seeking an adaptive reuse of a historic building will find an in-lieu fee beneficial on properties where providing the required parking would not only be costly but highly challenging. Since the 1992 Los Angeles riots downtown Los Angeles has seen a dramatic disinvestment. While new developments such as LA Live have started to appear, many historic buildings remain. Many of these historic buildings lie on property without parking facilities, making satisfying the parking requirement near-to impossible. However by enacting an in-lieu fee developers would find incentives to reinvest in downtown Los Angeles and preserve the neighborhood's culture and urban design.

The current zoning ordinance in Los Angeles provides developers with the option of requesting parking variances. These variances are granted to developments where parking would be difficult to provide, or too costly, such as in the case of affordable housing developments. When a variance is granted, the developer does not have to pay a fee for the forgone required parking. Alternatively, the city would gain this lost revenue through an in-lieu fee and abandon the administrative process involved in parking variances.

In-lieu fees most commonly benefit cities by collecting funds to purchase, develop, and

maintain public parking facilities in areas central to consumers and employees. By concentrating parking in shared facilities cities avoid many of the previously noted problems associated with parking requirements such as traffic congestion, empty parking spaces, and streetscapes disrupted by garage entrances. Shared public parking creates an efficient use of space because fewer spaces are necessary in order to meet the total demand for parking. For example, in Pasadena, CA, the shared structures cater to business personnel during the weekday, while simultaneously providing parking for shoppers and dinners in the evening and on weekends.

*Disadvantages of In-Lieu Fee Proposal:*

Dr. Shoup identifies four disadvantages of in-lieu fees in his report, “In Lieu of Required Parking.” He explains how a lack of on-site parking, high fees, lack of guarantees for parking, and fewer total parking spaces presented disadvantages for developers in cities that adopted in-lieu fee policy.<sup>59</sup> However the nature of transit oriented developments in Los Angeles, along with directing in-lieu fee revenue to access for transit, the current proposal avoids many of the generalized disadvantages of using an in-lieu fee.

In a survey developers expressed that the availability of on-site parking benefits developments—therefore making an in-lieu fee less attractive, especially in competitive markets. The current proposal addresses this concern by allowing developers to use the in-lieu fee for all or only a portion of the required parking. The policy will not require developers to forgo parking; rather it will give them a cost-effective alternative to constructing a large number of spaces. The fee will be financially beneficial because the amount, currently proposed at \$20,000 per parking space, is substantially lower than the average cost of constructing the required parking. Therefore, while the amount of the fee has been a concern for many developers, the fee

---

<sup>59</sup> Shoup, “In Lieu of Required Parking,” p. 308

in Los Angeles will be optional and set below the current cost of construction, making it a desirable alternative for developers.

Developers also voiced concern about the lack of guarantees over how the fee revenue would be spent. Guarantees over how the fee will be spent can be a disadvantage if a city does not construct enough spaces to satisfy the foregone required parking. If the fee is used improperly or too few spaces are provided, developers will be less likely to utilize the fee. The Los Angeles in-lieu fee proposal specifically designates the purpose of the fee, avoiding any possible shortcomings. For example the proposal states that in transit areas with less than five developments opting for the in-lieu fee in any two-year period will allocate the fees as follows: “50% to transit; 25% to pedestrian improvements; and 25% for improvements to public on- and off-street parking.”<sup>60</sup>

Lastly, developers often bring up the reduction in total number of parking spaces that result from adopting an in-lieu fee. The proposal addresses this problem by defining the geographic applicability based on the development’s distance from “a fixed rail transit stop, a bus rapid transit stop, or the intersection of two bus lines, one of which is on Metro’s 12 minute bus system.”<sup>61</sup> Most importantly, by dedicating the fee revenue towards transit access modes, the policy will begin to reduce the overall parking demand through increased alternative transit ridership. Additionally, the proposal requires that developments seeking to reduce parking supply by over 25% must acquire the Zoning Commissioner’s approval—allowing for a review of the current stock of parking in order to avoid a shortage.

Los Angeles will be able to move towards reforming parking and encouraging alternative transit by allowing developers an option of opting for an in-lieu fee. The proposal takes into

---

<sup>60</sup> Willson, p. 8

<sup>61</sup> Willson, p. 8

account concerns voiced by developers—by making the fee optional and monitoring the geographic applicability, the fee will avoid burdening developers and will not drastically alter the current parking sock.

## **Dedication of Fees Towards Transit Access**

### *Overview of Metro Funding Sources*

Los Angeles County’s public transportation and transportation planning is chartered by the Los Angeles County Metropolitan Transportation Authority (MTA), which received the majority of its funds from local funding sources. The agency provides services and planning for metro buses and rail, and funds various other transit modes such as the Metrolink train. MTA’s funding comes largely from a mix of federal, state, county, and city taxes, in addition to bonds and Metro fare revenue.

It is important to recognize that in 2008 54% of MTA’s funding came from local sources, while only 29% came from state and 17% from federal sources. Therefore in order to improve transit access in the region, elected officials must recognize the importance of local funding in furthering alternative transportation opportunities. Most of the local transit funding comes from local sales taxes designated for transportation through Propositions A and C, as well as local revenue bond financing.<sup>62</sup> Beginning in 2009 the State budget allocated \$1.4 billion to transportation with 20% towards the Public Transportation Account (PTA), 40% to the State Transportation Improvement Program (STIP), and 40% to local streets and roads.<sup>63</sup>

Most federal transportation funding received by Los Angeles is through the Safe, Accountable, Flexible, Efficient Transportation Equity Act—a Legacy for Users (SAFETEA-LU), which

---

<sup>62</sup> Los Angeles County Metropolitan Transportation Authority. “2006 Metro Funding Sources Guide.” Prepared by: Regional Programming Unit, 2006, p. 5

<sup>63</sup> Los Angeles County Metropolitan Transportation Authority, p. 6



authorizes funding for highways, transit, and safety enhancement. The dedication of these funds is a result of the latest version of The Highway Bill that has historically been exclusively highway focused. While the California receives Federal transportation funds, most are dedicated to the State Highway Account, rather than to local transit improvements.

The table below lists the specific expenditures from each local funding source that contributes to public transportation or transit access in LA.

Local Funding Source (description)	Annual Amount (millions)	Annual Amount Dedicated to Transit Access	Uses for Funds
Prop A (sales taxes)	\$620	\$147	Public transit programs
Prop C (sales taxes)	\$620	\$122	Public transit (general)
Transportation Development Act (state sales taxes)	\$315	\$6	Bicycle and pedestrian facilities
Fare Revenues (MTA fares)	\$379	\$275	General Metro operations

(MTA Funding Sources 2006)

An analysis of local funding shows that sales taxes and MTA fares are the only local sources dedicated to purposes related to public transit access. Currently major local funding from sources other than sales taxes are from the MTA general revenues from fares, advertising, and leases. However most of these fare revenue funds are dedicated general public transit operations that are largely consumed by operating costs rather than access improvements. As a result, of the

\$3.4 billion budgeted for MTA in 2009, only \$98 million comes from local non-fare revenues—only 2.9% of the agency's resources.<sup>64</sup> However these local programs, such as the HOV Violation Fund, may contribute to public transportation, but largely fail to address issues of access to alternative modes such as bicycling and walking.

### *Other Transportation Funding Sources*

Like many cities, Los Angeles requires developments that will result in significant transportation impacts to implement mitigation strategies. However the city only receives direct revenue from these impacts in certain parts of the City, and the fees are not dedicated directly to transit access. As Willson explains in the Green LA proposal, other cities dedicate similar fees towards transit and transit access. For example San Francisco imposes a Transit Impact Fee on non-residential uses, whose funds are directed towards capital and operating costs of transit services in the city. Portland, Oregon uses a similar fee called the Transportation System Development Charges, which goes towards improvements relating to motor vehicles, transit, bicycles, and pedestrian access.<sup>65</sup> Development fees that improve transit access will simultaneously mitigate transportation problems while reforming the relationship between cities and alternative transit.

Impact fees in Los Angeles exist to mitigate problems resulting from new developments but are only implemented in certain parts of the City, and even then the fees often fail to progressively reform use of transit in the City. When applicable, the Los Angeles Department of Transportation (LADOT) refers developers that project significant transportation impacts to the

---

<sup>64</sup> "Metro.net | Facts at a Glance." Metro.net | Transit Services and Information for Los Angeles County. 23 Apr. 2009 <[http://www.metro.net/news\\_info/facts.htm](http://www.metro.net/news_info/facts.htm)>

<sup>65</sup> Willson, p. 5

Department of City Planning, which then recommends mitigation solutions such as transit and pedestrian movements, and trip reduction measures. These mitigation techniques may result in improvements for transit access, however they may also be used for general transportation uses such as street signage and traffic lights. Alternatively, by allowing developers to use an in-lieu fee, the City will guarantee that access improvements reflect the changes in the area's parking supply (due to the new development's use of the in-lieu fee) and therefore promote alternative transportation modes.

## **Chapter 5: Update of Research on Cities Using In-Lieu Fee**

### *Explanation of Research Methods*

This report updates previous research and expands on the current understanding of in-lieu fees, while informing policy makers about the criteria to develop sustainable parking policies. Dr. Shoup surveyed 47 cities in 1996 in order to assess the benefits and disadvantages of in-lieu fees and how the policy was being implemented in the United States, Canada, Germany, South Africa, Iceland, and the United Kingdom. The following research updates and expands upon Dr. Shoup's evaluation of 24 US cities that were surveyed thirteen years ago. Updating the information on cities' in-lieu fees entailed researching city municipal codes and zoning ordinances, as well as interviewing planners from each city. The research expands on the original study by looking at how the policy is being implemented in practice in order to recommends ways in which cities can optimize in-lieu fee policies in order to make significant parking reform. The results show that planners identified similar benefits and disadvantages to in-lieu fees that Dr. Shoup found in 1996, however developers in most cities do not frequently opt to use the fee for various reasons and therefore limit the benefits that parking reform can bring to cities.

By conducting original research to obtain data, the report expands on Dr. Shoup's previous study and offers an assessment of how implementation has taken place and the fee's effectiveness in reforming the way parking takes place in cities. All of the 24 US cities surveyed had in-lieu fees at the time of Dr. Shoup's 1996 study, therefore the cities were ideal to

reevaluate for this study because of their long history of using this particular policy. Each city, despite the magnitude at which the in-lieu fee is utilized in practice, was able to offer insight on the various changes resulting from adopting the policy over a decade ago. Interviews with city planners provided knowledge on their city's individual use of the fee, but also of the policy's potential, whether achieved in that city or not. Interview questions sought to expand on Dr. Shoup's study by evaluating the actual, and not just theoretical, implementation of the policy by the city and developers. In addition, interviews offered insight on the tangible benefits achieved since the adoption of the policy.

In order to provide information for cities such as Los Angeles, which do not currently use an in-lieu policy, the study focused on identifying key criteria recognized by planners as advantageous and disadvantageous to the city. Data such as how the fee is utilized by developers, and the applicability of the fee to different land uses can provide lessons on how Los Angeles as well as other cities can construct sustainable parking policies that ultimately seek to reduce the overall footprint of parking. The resulting analysis, which includes policy critiques and data accumulated through open-ended interviews with various city planners, evaluates policy criteria to assist in developing and reforming in-lieu policies throughout the United States.

*List of Case Study Cities*

Berkeley, CA	Orlando, FL
Beverly Hills, CA	Montgomery County, MD
Carmel, CA	State College, PA
Claremont, CA	Lake Forest, IL
Concord, CA	Kirkland, WA
Culver City, CA	Chapel Hill, NC
Davis, CA	
Hermosa Beach, CA	
Lafayette, CA	
Manhattan Beach, CA	
Mountain View, CA	
Mill Valley, CA	
Palm Springs, CA	
Palo Alto, CA	
Pasadena, CA	
San Francisco, CA	
San Rafael, CA	
Walnut Creek, CA	

The following chart displays general information on how in-lieu fees are currently being implemented in the same 24 cities that Shoup initially surveyed in 1996. The information was obtained through city zoning ordinances and interviews with city planners (information on where to find municipal codes and zoning ordinances for each city is provided in the appendix).

### Case Study Cities' Use of In-lieu Fee

CITY	POLICY WIDELY USED?	SPECIFIED AREA?	OPTIONAL?	SHIFT IN LOCAL OF PARKING?	HOW HAVE FEES BEEN APPLIED?	SOURCE OF TRANSIT ACCESS FUNDS
* <sup>1</sup> BERKELEY	No	Yes, "parking districts"	Yes	No	Program on hold until nexus study is complete	Parking tax for general muni uses
	Other:					
BEVERLY HILLS	No, only for small # of spaces	Yes	Yes, with approval	No, not from fee, but generally more underground garages	Parking enterprise fund- city owned parking structures	
	Other: Saves and accommodates the use of historic buildings while still supporting the business community. Challenge- limited parking, high demand					
CARMEL	No (no development s occurring)	Yes Commercial districts	Yes	No, but if used more it would shift	Sufficient fees have not been collected to implement a community parking project	Regional impact fee (collected by county)
	Other: Fee has helped protect historic/ important buildings from being demolished in order to construction parking facilities					
CLAREMONT	No	Yes, village only	yes	Yes, shared lots	Towards more parking lots, not used in a while	Transportation impact fee
	Other:					
CONCORD	No (downtown built out)	Yes, CBD	no	Moderate	Structures already built. Not sure.	Transportation mitigation fee
	Other: Fee amount only \$1,572 (not updated since 2004)					
CULVER CITY	No	No	Yes	No	No used because it wouldn't be enough to build structure	
	Other: No one has used the fee since the 1980's, and the city does not encourage it because the city could not collect enough money from the fee to build a shared lot.					
DAVIS	Yes	Yes, commercial district	Yes	Fee pre-dates other shared garages in the downtown	Potentially will be used to build new garages- current debate	?

	Other: The amount of fee depends on the use and encourages retail by lowering amount of particular land uses. Private and city-owned garages are widely used already in downtown.					
<b>HERMOSA BEACH</b>	Yes (land use changes)	Yes. Only downtown parking zone	Yes (some exceptions)	No (study conducted, structures planned...\$)	Accumulating to fund parking structures	Impact fees towards access
	Other: Amount of fee is very high					
<b>LAFAYETTE</b>						
<b>MANHATTAN BEACH</b>	No	Yes, Downtown	Yes (if lot exceeds 1:1 ratio?)	No	Not yet applied	
<b>MILL VALLEY</b>	No (built out)	Yes, Commercial district	No	No sure- some shared lots	No yet applied	
	Other: fee amount expensive \$9,000 per space					
<b>MOUNTAIN VIEW</b>	Yes	Yes, Downtown parking district	No, Required for most, rarely “opted” into	Yes, allowed construction of city garages	Used to develop shared garages along with other parking revenue	T.O.D. building permit fees and transit impact fees
	Other: Fee has been used to reward reduction of parking and to preserve and accommodate small sites. Historic core of downtown has older narrow lots that cannot accommodate parking.					
<b>PALM SPRINGS</b>	No	Yes, CBD	Yes (not encouraged)	No	Constructed minimal surface lots	Impact fee
	Other: Downtown needs more parking in order to meet traditional parking requirement					
<b>PALO ALTO</b>	No	Yes (any parking assessment districts)	Yes			



<b>*<sup>2</sup>PASADENA</b>	Yes (Zoning Parking Credits)	Yes, different parking districts	Yes, property owners make contracts with city	Yes	Centralized shared garaged	Prop A & C funds, portion of the City's TR/TIF fee (collected new developments)
<b>*<sup>3</sup>SAN FRANCISCO</b>	No-not in use	Yes, CBD	No	Yes	N/A	Impact fee
<b>*<sup>4</sup>SAN RAFAEL</b>	No	Yes, downtown parking assessment district	Yes, requires city approval	No	No	
	Other: Some parking is already providing by the city. The City of already a built-out environment. Fee does not present developers with an economic incentive.					
<b>WALNUT CREEK</b>	No, only for small additions for businesses in CBD	Yes (Pedestrian retail zoning district)	Yes- gave flexibility to the city and developers	Downtown is already compact, parking is still difficult-getting in and out of garages (congestion), not enough spaces	Centralized shared garages (5 in downtown area)	Traffic impact mitigation fee (new developments)
	Other: Benefits small property owners by allowing them to improve their buildings and meeting parking requirements. City has been reducing minimum parking requirements for downtown area, developments in proximity to transit, and for low income and multifamily residential uses. Fee recently raised in order to include money for land costs: \$60,000					
<b>ORLANDO</b>		Yes (within downtown parking program)				
<b>MONTGOMERY COUNTY</b>	No	Yes (in parking lot districts in the 4 CBDs)	Yes	Shift not direct result of fee, but of city-owned facilities. In-lieu promotes city's policy perspective	Towards public, shared facilities (significant revenue source)	Impact Fee and incentives for private sector to provide mitigations

	Other: City faces challenge in not over-burdening public parking structures in CBD. Developers outside of parking lot districts can reduce parking through mitigations such as shuttle services. City adopting parking maximums in near future. Challenges- new residential rental developments want parking on-site, employee parking on site despite metro services, fee/tax is very high (if reducing parking by 60-100% the same flat fee applies).					
<b>STATE COLLEGE</b>	No (rare)	Yes	Yes	No, but reinforces philosophy of shared lots	Off-set costs of small (220 space) parking deck and purchase site for new lot	
	Other: The policy has allowed small businesses to thrive and expand downtown					
<b>*<sup>5</sup>LAKE FOREST</b>	No	DID NOT KNOW ABOUT IT. Yes- CBD		No		
<b>KIRKLAND</b>	No (program on hold)	Yes, CBD	Yes	No impact	Parking lot under library	Real Estate development impact fees
	Other: Parking policy reforms are shifting towards market priced parking on-street & in lots					
<b>CHAPEL HILL</b>	No (not used for 20 years)	Yes, town center zoning district	Yes	No	No	

Some information could not be attained at the time of the research. Additionally, at the time of the study the following cities used alternatives to in-lieu fees to manage parking policy. Some of the programs are essentially identical to the in-lieu fee, while other cities, such as San Francisco, have implemented alternative strategies. These alternative programs are described briefly below, for more information, locate the city's municipal zoning ordinance located online.

\*<sup>1</sup> Berkeley, CA: The city uses the fee, however the program is on hold because the districts have not completed a nexus study. However when completed the districts will establish a parking fund to develop public parking.

\*<sup>2</sup> Pasadena, CA: Referred to as "Zoning Parking Credit Program," which is limited to certain parts of the city (commercial districts), and requires that property owners sign a contract with the city for each development or use. Revenue from the ZPC fees gets credited into parking funds for the appropriate district.

\*<sup>3</sup> San Francisco, CA: An in-lieu fee policy does not exist in the zoning ordinance, as of Spring 2009. Off-street parking is not required in the downtown, parts of Chinatown, and for various residential uses. However a parking tax is used to maintain centralized public parking facilities.

\*<sup>4</sup> San Rafael, CA:

\*<sup>5</sup> Lake Forest, IL: Referred to as “Parking Development Payment” (PDP) that is paid if the shortage of parking exceeds 20%

*Quick View of Results:*

- At least 9 of the 24 case study cities currently do not utilize the policy
- The policy is widely used in 4 of the 24 case study cities
- The policy is optional for at least 17 of the 24 case study cities
- The policy is used only in a specified area/zoning district in 23 of the 24 case study cities
- 5 of the 24 case study cities have experienced a shift in where parking takes place as a result of the in-lieu fee
- 10 of the 24 cities have applied the fees towards alternative parking solutions (i.e. shared parking facilities)

## **Chapter 6: Findings: Recommendations for an In-Lieu Fee**

### **Evaluation Criteria For a Sustainable and Effective In-lieu Fee Policy**

The following provides information for policy analysts and city planning agencies on how to best implement an in-lieu fee policy to achieve the highest level of parking reform. An analysis of the results of use of in-lieu fees by various cities corroborates the arguments made by Dr. Shoup in his previous in-lieu fee studies. The experiences of those cities are also instructive in providing specific criteria essential in implementing a sustainable and effective in-lieu fee policy.

#### *Frequency of Use and Implementation (for specific zoning categories)*

While Dr. Shoup's 1996 study asserts that each city profiled in the study utilized an in-lieu fee, interviews with planners from those cities found that despite the presence of the policy in each city's zoning ordinance, the policy is not always implemented in practice. This information expands on Dr. Shoup's argument that making an in-lieu fee mandatory rather than optional enhances the impact of the policy on shared parking, urban design, and commercial districts with continuous shop fronts.<sup>66</sup> Updated research found that in cities with few or no new developments, the in-lieu fee had an insignificant impact. However, in cities with new developments, such as Palm Springs, California, the fee was generally unused when made optional to developers and/or the city's planning commission.

Many of the cities contain CBD's that are built-out and therefore do not experience many new developments needing to comply with the minimum parking requirement. For example in Mill Valley, a small town north of San Francisco, the village-style downtown cannot expand

---

<sup>66</sup> Shoup, "The High Cost," p. 236

further. Therefore the fee is only used when a property owner dramatically changes the use of a property. Businesses changing to bars or restaurants are the most common change that will force a property owner to pay an in-lieu fee.

The research also found that an overwhelming majority of the cities allowed developers to opt to use the in-lieu fee by right, rather than by the planning commissioner's or zoning administrator's discretion. The cities that required developers to use the in-lieu fee did so only in commercial districts, such as in Claremont, California. However some cities such as Beverly Hills and Culver City, apply the in-lieu fee policy to multiple districts where it is optional and often contingent upon the city's approval. In these cities developers more frequently opt to use the in-lieu fee. Requiring an in-lieu fee only in a built-out downtown area does little to reform the current parking habits. But utilizing the in-lieu fee throughout a city's various commercial, semi-commercial and mixed-use districts, allows the policy to influence new developments and gradually dictate the city's relationship with parking and transportation.

### *Geographic Applicability*

All 24 cities surveyed chose to restrict use of in-lieu fees to specific zones or districts. Some cities defined the geographic areas by commercial districts or CBD, while others used zoning definitions such as special parking districts. For example, Palo Alto, California uses parking assessment districts to differentiate between parking requirements in different areas such as the downtown assessment district and the University Avenue assessment district.<sup>67</sup> Regardless of how cities classified the areas for in-lieu fee use, no city used availability of transit as a deciding factor. The availability and type of transit that may be accessed in a certain area, by nature, dictates the demand and necessity for parking. Therefore the frequency of transit modes

---

<sup>67</sup> City of Palo Alto "Parking in Palo Alto," <http://www.cityofpaloalto.org/depts/pln/transportation/parking.asp>.>

such as buses and rail lines should play an essential role in determining whether in-lieu fees should be applied in a particular district. However, currently the majority of cities evaluate the need for in-lieu fees based on the concentration of businesses in a certain zoning district. By continuing to apply in-lieu fees this way cities will fail to promote alternative transportation because commercial areas will be fully supplied with public shared lots rather than metro stops.

### *Amount of Fee*

Despite expanding the geographical applicability of the policy, if cities do not require developers to comply with the in-lieu fee, many developers opt instead to comply with the traditional minimum parking requirement because of the potential benefit the parking spaces will bring to the development. Therefore if the fee is made optional planners must factor in the potential benefit that the parking spaces will bring to the property, in addition to the land and construction costs. In cities such as Los Angeles parking spaces are valuable commodities that can generate substantial revenue. Therefore in setting the amount of the fee, planners must consider the added value that the parking spaces bring to a development. If an optional fee is too high, the developer is more likely to build the parking spaces. While the amount of the fee may dictate the developer's discretion as to whether to use the fee, many planners explained that because of infrequent use, the fee had not been adjusted for many years. It is important to note that the cities examined vary widely in land, construction, and development costs. It is therefore challenging to accurately gauge the influence that the amount of fee plays in determining if developers opt to pay the fee. If the fee is mandatory rather than elective, the city does not need to be as concerned about the level of the fee since the cost of the fee versus the benefit of incremental parking will not be relevant.

### *Collection of Fee*

Of the cities interviewed that regularly collect in-lieu fees, uniform and previously set fees prove the most efficient for developers and city administrators.

### *Use of Funds: Effectively Shift Where Parking Takes Place*

Only four of the 24 cities surveyed identified clear shifts in the locations where parking takes place as a result of the in-lieu fee. All of the four cities achieved this shift by using the in-lieu fees and other parking revenues to help finance the construction and development of public parking structures or shared lots. While the majority of the other cities also had public parking structures, they were not a direct result of the in-lieu fee, but rather parts of other strategies to include shared parking in commercial districts—often prior to the city adopting an in-lieu policy.

The cities of Mountain View, Beverly Hills, and Claremont, California offer insight on how funding directed towards shared parking can encourage small businesses and historic preservation, as well as centralize parking in a small downtown. City planners from Mountain View acknowledge that the fee allows the city to preserve the historic downtown core that has small, narrow lots that would not be able to otherwise accommodate the minimum parking requirement. Similar to Mountain View, Claremont's historic village area is pedestrian friendly as a result of the shared lots that were built using in-lieu fees. The village area is similar to a traditional main street and contains many small retail shops and restaurants. While in-lieu fees are generally only used in Claremont when a property changes land uses, the fees have been used to develop the village's shared lots. These shared lots have been a part of the village area for many years, and because of the in-lieu fees, the city has had a source of funds to maintain and expand the parking facilities.

Planners in Beverly Hills also remarked on the fee's ability to accommodate the use of historic buildings for businesses and avoid hindering customer access. The fee has been especially beneficial here where business interests are a strong consideration in city planning. However by using an in-lieu fee Beverly Hills has been able to provide public parking in city-owned structures through the Parking Enterprise Fund, of which the in-lieu fee is part.

## **Recommendations for Los Angeles City Council**

### *Define Appropriate Geographic Applicability*

To accurately evaluate the extent to which a property requires parking, the city must define transit nodes and corridors, as well as other districts that will benefit from in-lieu fees and revenues towards access. In these areas, such as a commercial district, the City may choose to require a certain level of reduction of parking spaces through the in-lieu fee. Another option, rather than making the in-lieu fee required, would be to provide increased incentives for developers using the in-lieu fee for properties in the defined areas. Professor Willson suggests an example for a transit node defined as a "½ mile radius of fixed rail transit stop or a ½ mile radius of a major bus stop with a service frequency over a defined level."<sup>68</sup> Areas heavily served by transit will provide the first opportunities to implement in-lieu provisions, as these areas can already accommodate alternative transit users. Identifying these areas will also encourage developers to include transportation mitigation strategies at properties because people using the property will be less dependent on on-site parking facilities. Lastly, identifying transit nodes and corridors will provide information to the Department of City Planning on areas that lack proper access and alternative transit systems. Other areas that are by nature less difficult to define are

---

<sup>68</sup> Willson, p. 7



commercial and historic districts. As explained earlier, commercial districts and historic areas are disadvantaged by minimum parking requirements and should be immediately targeted by the policy to being parking reform and to improve urban design.

### *Evaluate and Enforce The Level of In-Lieu Fee Usage*

In order for Los Angeles to reform parking policy and encourage public transportation, an appropriate in-lieu fee policy must be developed and widely used. The policy must take into account how other cities have enticed developers to opt for the in-lieu fee, so that the policy has substantial impact in where and how parking takes place. As previously established, the amount of the fee does not always dictate how developers utilize the fee. The study also concluded that many cities only need the in-lieu option in certain districts such as the CBD, and for practical reasons prefer to maintain traditional parking policies in residential areas. Therefore the policy should not be implemented universally city-wide and also must consider current parking and transportation stock in certain areas to evaluate whether the City or the developer should be given the option to chose when to use the fee.

While developers react to incentives, the value of future parking spaces may outweigh the financial benefits of an in-lieu fee. Therefore Los Angeles must create a way in which the city's Zoning Administrator can evaluate use of the fee based on the transportation needs of the area where the property is located. Requiring developers to complete a Transportation and Access study, or similar report, would allow developers initial discretion to opt to use the in-lieu provisions. However, by providing a study to the Zoning Administrator, planners will be able to either approve or deny the developer's request—therefore either requiring or denying the developer use of the in-lieu fee. This decision would be based on the City's long-term plans

related to urban design and public transportation, rather than each individual developer's conclusion on the value of additional parking to its project.

### *Collect Revenue for Access and Alternative Parking Approaches*

In recent years Metro has experienced financial difficulties due to revenue loss and various legislation banning the use of specific funds towards transit improvements. Without implementing an in-lieu fee, the City will have to depend on traditional funding sources that have proven to be largely dedicated towards mass transit improvements such as subway lines. An in-lieu fee will allow Los Angeles to create a local revenue source that will guarantee the capital required to make access improvements and fund alternative parking approaches.

The report showed that cities are able to collect significant revenue from in-lieu fees. For example, in Montgomery County, Maryland, the revenues collected help fund the development of city-owned parking facilities. As a result the parking facilities generate additional revenue for the city from its daily operations. In areas of Los Angeles such as the Central City, centralized city-owned lots will generate revenue for the city, as well as accommodate properties that reduce the number of off-street parking spaces they provide. Similarly, if Los Angeles dedicates even a portion of the fees towards access, the improvements in access will encourage alternative transportation use. This will generate additional MTA fare revenues that will contribute to the expansion of alternative transportation in Los Angeles. These improvements, while often small in scale, will begin the process of promoting access to alternative transportation options that have so far received limited funding.

## **Chapter 7: Recommendations For Future Research Opportunities**

While many assume that ubiquitous free parking exists to benefit drivers, employees and businesses, the ramifications of poor parking policies in cities have not only encouraged driving, but also pose challenges in areas such as urban design, historic preservation and traffic in CBDs. The research identified that many cities, while using in-lieu fees, do not enforce the policy to its full extent, and therefore do not reap the potential benefits such as reduced traffic congestion and increased use of public transit. Therefore research that will contribute to expanding the understanding of how cities may better utilize parking reforms will aid in effectively reversing the effects of minimum parking requirements.

Future research should address the barriers cities face in effectively implementing parking reforms. Examining issues such as strong business lobbies, high parking demand in CBDs and insufficient public transportation systems may offer insight on how to better implement parking reforms. In order for cities to succeed in comprehensive parking reform, research is needed to evaluate the effectiveness and sustainability of alternative parking solutions such as market-rate meter parking, maximum parking requirements, and car-share and parking cash-out programs.

While alternative policies offer hope for urban parking problems, true reform will not be achieved without policies that expand and promote access and ridership of alternative transportation modes. Further studies on how cities can fund alternative transportation will benefit local governments that lack such support. While most cities fund transportation projects through development fees, other sources of revenue such as increased metered parking may benefit cities in need of public transportation but facing low development rates and large fiscal deficits.

Policies such as in-lieu fees are often controversial and depend on the support of policy-makers. However, development strategies that encourage alternative transportation and mixed-use developments depend less on city policy initiatives and more on creative development strategies and research. Therefore research that explores Smart Growth and transit-oriented development strategies will further efforts to eliminate the destructive effects of free parking and promote urban revitalization. In Los Angeles, recent transit-oriented developments offer opportunities to identify effective strategies that reduce parking demand and revitalize the city's urban core.

### **Bibliography**

- Alexander, C., Ishikawa, S., & Silverstein, M. (1977). *A Pattern Language*. New York: Oxford University Press.
- Au, Ceri. "The New Science of Parking." *Time Magazine*. *TIME*. 9 July 2007.  
<<http://www.time.com/time/nation/article/0,8599,1641244,00.html>>.
- Baker, Linda. "No Parking: Condos Leave Out Cars." *The New York Times* 12 Nov. 2006: 12.
- City of Los Angeles, "Green LA: An Action Plan to Lead the Nation In Fighting Global Warming." Mayor Antonia R. Villaragosa, May 2007, p.3.
- City of Los Angeles Municipal Code. Chapter 1, General Provisions & Zoning. Section 12.22 A25(d)
- City of Palo Alto "Parking in Palo Alto,"  
<http://www.cityofpaloalto.org/depts/pln/transportation/parking.asp>>
- Delucchi, Mark A., "Total Cost of Motor Vehicle Use," *Access*, No.8, Spring 1996.
- Dhondrup, Robert. *Parking Requirements Guide for Developers*. Rep.No. Southern California Association of Non-Profit Housing. 2007.
- Edwards, Bob. American Radio Host.
- Ensha, Azadeh. "Can Parking Policy Ease Congestion?" *The New York Times*. 1 July 2008.<<http://wheels.blogs.nytimes.com/2008/07/01/fix-parking-cure-congestion/>>.
- Gottlieb, Robert. *Reinventing Los Angeles*. Boston: MIT Press, 2007.
- Gottlieb, Robert, Regina Freer, Mark Villianatos, and Peter Dreier. *The Next Los Angeles*. Los Angeles: University of California Press, 2005.
- Institute of Transportation Engineers. 1987. *Parking Generation*. 2<sup>nd</sup> edition. Washington, DC: Institute of Transportation Engineers.
- Jakle, J., & Sculle, K. (2004). *Lots of Parking: Land use in a car culture*. Charlottesville, VA: University of Virginia Press.
- Kay, Jane H. "A Brief History of Parking: The Life and After-life of Paving the Planet." *Jane Holtz Kay*. 20 Oct. 2008.
- Liberty Hill. "Green LA."  
[http://www.libertyhill.org/common/publications/Greenla/GREENLA\\_to\\_print.pdf](http://www.libertyhill.org/common/publications/Greenla/GREENLA_to_print.pdf)>
- Los Angeles County Metropolitan Transportation Authority. "2006 Metro Funding Sources Guide." Prepared by: Regional Programming Unit, 2006

"Metro.net | Facts at a Glance." Metro.net | Transit Services and Information for Los Angeles County. 23 Apr. 2009 <[http://www.metro.net/news\\_info/facts.htm](http://www.metro.net/news_info/facts.htm)>.

Mumford, Lewis. American Writer, 1895-1990.

Michael Manville and Donald Shoup, "People, Parking, and Cities," *Access* No. 25, Fall 2004, pp. 2-8.

Millard-Ball, Adam, "Putting On Their Parking Caps," *Planning*, April 2002.

Shoup, Donald C. "Cruising for Parking," *Transport Policy*, Vol.13, No.6, November 2006, pp.479-486.

Shoup, Donald C. "An Opportunity to Reduce Minimum Parking Requirements," *Journal of the American Planning Association*, Vol 61, No. 1, Winter 1995, pp. 14-28

Shoup, Donald C. "San Francisco and L.A.: Parking makes the difference." Planning. Vol. 71, No. 1, January 2005, pp. 36-37.

Shoup, Donald C The High Cost of Free Parking, Chicago: Planners Press, 2005.

Shoup, Donald. "The High Cost of Free Parking," *Journal of Planning Education and Research*, Vol. 17, No. 1, Fall 1997, p 3-20.

Shoup, Donald C. "Gone Parkin'" The New York Times 29 Mar. 2007: 25.

Shoup, Donald C. "In Lieu of Required Parking," *Journal of Planning Education and Research*, Vol. 18, No. 4, Summer 1999, pp. 307-320.

Shoup, Donald C. "San Francisco and L.A.: Parking Makes the Difference." *Journal of the American Planning Association*, Vol. 71, No.1, Jan 2005, p.36-38.

Shoup, Donald C, "The Trouble with Minimum Parking Requirements," *Transportation Research Part A*, Vol. 33A, Nos.7-8, September/November 1999, pp. 549-574.

Shoup, Donald C, "The Ideal Source of Local Public Revenue," *Regional Science and Urban Economics*, Vol. 34, No. 6, November 2004, pp. 753-784.

Shoup, Donald C., Wilson, Richard. "Commuting, Congestions, and Pollution: the Employer-Paid Parking Connection." Working Paper, no. 120. The University of California Transportation Center, Presented at the Congestion Pricing Symposium; June 1992.

Smith, Wallace. 1964. The Low-Rise Speculative Apartment, Research Report 25. Berkeley: University of California Center for Real Estate and Urban Economics.

Spivak, Alvin L., *The Elephant in the Bedroom: Automobile Dependence and Denial: Impacts on the Economy and Environment*, Pasadena: New Paradigm Books, 1993.

Urban Land Institute, Office Development Handbook, 2<sup>nd</sup> ed., Washington, DC: Urban Land Institute, 1998.

Vickrey, William. "The Economizing of Curb Parking Space," *Traffic Engineering*, November, p. 62-67.

Vinit Mukhija and Donald Shoup, "Quantity versus Quality in Off-Street Parking Requirements," *Journal of the American Planning Association*, Vol. 72, No. 3, Summer 2006, pp. 296–308.

Vuchic, Vukan R., "Transportation for Livable Cities," Center for Urban Policy Research, 1999.

Voith, Richard. "The Downtown Parking Syndrome: Does Curing the Illness Kill the Patient?" Federal Reserve Bank of Philadelphia Business Review, January/February 1998, 3-14.

Weikel, Dan. "Brake Light Blues: Pricey parking could unclog city's arteries." Los Angeles Times 11 June 2008: 21.

Willson, Dr. Richard. "A Parking In-lieu Fee for Access: Support for Transit Corridors in Los Angeles." Prepared for: *Green Los Angeles*. Draft: January 5, 2009

Wolf, Winfried. Car Mania: A Critical History of Transport. Chicago: Pluto Press. 1996.

## Appendix

### *Municipal Codes and Zoning Ordinances for Cities Surveyed:*

Carmel-By-The-Sea, City of, California. 2009. "Carmel-By-The-Sea Municipal Code." Seattle: Code Publishing Company, 2009. Available at <http://www.codepublishing.com/CA/carmel.html>

Claremont, City of, California. 2009. "The Claremont Municipal Code." Available at: <http://www.ci.claremont.ca.us/municipalcode.cfm>.

Concord, City of, California. 2009. "Municipal Code." Available at: <http://www.ci.concord.ca.us/citygov/municode/chapter122.htm>.

Culver City, City of, California. 2005. "Culver City Municipal Code." Available at: [http://www.culvercity.org/planning/pdf/zoning\\_code.pdf](http://www.culvercity.org/planning/pdf/zoning_code.pdf)

Davis, City of, California. 2009. "Davis Municipal Code." Available at: <http://cityofdavis.org/cmo/citycode/chapter.cfm?chapter=40>.

Lafayette, City of, California. 2008. "Municipal Code, City of Lafayette, California." Available at: <http://municipalcodes.lexisnexis.com/codes/lafayetteca/>.

Manhattan Beach, City of, California. 2009. "Manhattan Beach, CA Municipal Code." Available at: <http://municipalcodes.lexisnexis.com/codes/manhattanb/>.

Mountain View, City of, California. 2008. "Code of Ordinances, City of Mountain View, California." Available at: <http://www.municode.com/Resources/gateway.asp?pid=16508&sid=5>.

Mill Valley, City of, California. 2008. "Mill Valley Municipal Code." Available at: <http://www.cityofmillvalley.org/Index.aspx?page=76>.

Palm Springs, City of, California. 2008. "Palm Springs Municipal Code." Available at: <http://www.qcode.us/codes/palmsprings/>.

Palo Alto, City of, California. 2007. "City of Palo Alto Zoning Ordinance." Available at: [http://www.cityofpaloalto.org/depts/pln/planning\\_forms.asp#Zoning%20Code](http://www.cityofpaloalto.org/depts/pln/planning_forms.asp#Zoning%20Code).

Pasadena, City of, California. 2009. "City of Pasadena Zoning Code." Available at: <http://ci.pasadena.ca.us/zoning/P-4.html#17.46.030>.

San Francisco, City of, California. 2008. "City and County of San Francisco Municipal Code Planning Code." Available at: <http://www.municode.com/Resources/gateway.asp?pid=14139&sid=5>.

San Rafael, City of, California. 2009. "Municipal Code, City of San Rafael, California." Available at: <http://ordlink.com/codes/sanraf/index.htm>.



Walnut Creek, City of, California. 2008. "Walnut Creek Municipal Code." Available at: [http://www.amlegal.com/nxt/gateway.dll/California/walnutcreek/walnutcreekmunicipalcode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:walnutcreek\\_ca](http://www.amlegal.com/nxt/gateway.dll/California/walnutcreek/walnutcreekmunicipalcode?f=templates$fn=default.htm$3.0$vid=amlegal:walnutcreek_ca).

Orlando, City of, Florida. 2009. "Code of the City of Orlando, Florida." Available at: <http://www.municode.com/Resources/gateway.asp?pid=13349&sid=9>.

Montgomery County, City of, Maryland. 1994. "Zoning Code." Available at: <http://www.montgomerycountymd.gov/apps/gis/zonelist.asp>.

State College, City of, Pennsylvania. 1981. "Code of Ordinances of the Borough of State College." Available at: <http://www.statecollegepa.us/index.asp?NID=106>.

Lake Forest, City of, Illinois. 2005. "The City of Lake Forest Zoning Code." Available at: <http://www.cityoflakeforest.com/pdf/cd/zoningcd.pdf>.

Kirkland, City of, Washington. 2009. "Kirkland Zoning Code." Available at: [http://kirklandcode.ecitygov.net/CK\\_KZC\\_Search.html](http://kirklandcode.ecitygov.net/CK_KZC_Search.html).

Chapel Hill, City of, North Carolina. 2007. "Chapel Hill Land Use Management Ordinance." Available at: <http://www.townofchapelhill.org/common/modules/documentcenter2/documentview.asp?DID=523>.

## In Lieu of Required Parking

*Donald C. Shoup*

---

*No version of the system ever quite withstood the test of additional refined observations.* - Thomas Kuhn

Americans learn about free parking early, when they play *Monopoly*. Players buy property, build houses and hotels, pay rent, or go to jail at a toss of the dice – but in one toss out of 40 they land on "Free Parking."<sup>1</sup> When they grow up and drive cars, the odds of landing on free parking increase dramatically; American motorists park free for 99 percent of all their trips.<sup>2</sup>

If motorists don't pay for parking, who does? Initially, developers pay for parking. Providing all the spaces necessary to meet minimum parking requirements in zoning ordinances raises the cost and reduces the density of development. The cost of parking is then shifted into higher prices or lower values for everything else – so everyone pays for parking indirectly. Residents pay for parking through higher prices for housing. Consumers pay for parking through higher prices for goods and services. Employers pay for parking through higher office rents. Workers pay for parking through lower cash wages. Property owners pay for parking through lower land values. Because motorists park free for 99 percent of all trips, only in our role as motorists do we *not* pay for parking. Everyone but the motorist pays for parking.

Minimum parking requirements in zoning ordinances collectivize the cost of parking, while market prices for parking individualize this cost. Unless the price of parking gives motorists an incentive to economize, the cost of parking does not influence decisions on whether to own or drive a car. With the cost of parking hidden in the prices of other goods and services, people cannot choose to pay less for parking by using less of it.

Parking requirements generally hide the cost of parking within the cost of development, but in one case this cost is explicit: Some cities offer developers the option of paying a fee in lieu of providing the required parking. For example, Palo Alto, California, allows developers to pay the city a fee of \$17,848 for each required parking space that is not provided. The city then uses the revenue for public parking spaces to replace the private parking spaces that developers would have provided.

In this paper, I use cities' in-lieu fees to estimate the developers' cost of complying with parking requirements. I then examine another promising in-lieu option: *allow developers to reduce parking demand rather than increase the parking supply*. Examination of an Eco Pass program in California shows that paying the transit fare for commuters who arrive by bus costs far less than providing the parking required for commuters who arrive by car.

### ABSTRACT

Some cities allow developers to pay a fee in lieu of providing the parking spaces required by zoning ordinances, and use this revenue to finance public parking spaces to replace the private parking spaces the developers would have provided. This paper presents a survey of in-lieu programs in 46 cities in the United States, Canada, the United Kingdom, South Africa, Germany, and Iceland. These in-lieu programs reduce the cost of development, encourage shared parking, improve urban design, and support historic preservation. The in-lieu fees also reveal that the cost of complying with minimum parking requirements is more than four times the cost of the impact fees that cities levy for all other public purposes combined. The high cost of required parking suggests another promising in-lieu policy: allow developers to reduce parking demand rather than increase the parking supply. Examination of an Eco Pass program in California shows that reducing parking demand can cost far less than increasing the parking supply.

*Donald C. Shoup is a professor of urban planning and the director of the Institute of Transportation Studies at the School of Public Policy and Social Research, University of California, Los Angeles; shoup@ucla.edu.*

## ■ A SURVEY OF IN-LIEU PARKING PROGRAMS

I have surveyed the in-lieu parking programs in 46 cities: 24 in the United States, seven in Canada, six in the United Kingdom, six in Germany, two in South Africa, and one in Iceland (see Table 1)<sup>3</sup>. The ordinances and supporting documents for the in-lieu programs were examined, and officials who administer the programs were interviewed. The survey results are summarized in three sections: (1) the advantages and disadvantages of in-lieu fees, (2) how cities set the fees, and (3) issues that arise in administering the programs.

### Advantages of In-Lieu Fees

Officials in the surveyed cities reported that in-lieu fees have five major advantages for both cities and developers.

1. *A new option.* In-lieu fees give developers an alternative to meeting the parking requirements on sites where providing all the required parking spaces would be difficult or extremely expensive.
2. *Shared parking.* Public parking spaces allow shared use among different sites where the peak parking demands occur at different times. Shared public parking is more efficient than single-use private parking because fewer spaces are needed to meet the total peak parking demand. Shared parking also allows visitors to leave their cars parked while making multiple trips on foot, and is one of the easiest ways to make better use of scarce urban land.
3. *Better urban design.* Cities can put public parking lots and structures where they have the lowest impact on vehicle and pedestrian circulation. Less on-site parking allows continuous storefronts without "dead" gaps for adjacent surface parking lots. To improve the streetscape, some cities dedicate the first floor of the public parking structures to retail uses. Developers can undertake infill projects without assembling large sites to accommodate on-site parking, and

architects have greater freedom to design better buildings.

4. *Fewer variances.* Developers often request parking variances when providing the required parking would be difficult. These variances create unearned economic windfalls, granted to some but denied to others. If developers can pay cash rather than provide the required parking, cities do not have to grant parking variances and can therefore treat all developers consistently.
5. *Historic preservation.* In-lieu fees allow adaptive reuse of historic buildings where the new use requires additional parking that is difficult to provide. The in-lieu policy therefore makes it easier to preserve historic buildings and rehabilitate historic areas.

### Disadvantages of In-Lieu Fees

Officials in all the surveyed cities recommended in-lieu fees, but some reported that developers were at first skeptical of them. The following four points summarize the potential disadvantages mentioned by developers.

1. *Lack of on-site parking.* Parking is a valuable asset for any development. A lack of on-site, owner- controlled parking can reduce a development's attractiveness to tenants and customers. While a lack of on-site parking is a real disadvantage, developers who are concerned about this problem can always provide the parking rather than pay the fee.
2. *High fees.* Cities may not construct and operate parking facilities as efficiently as the private sector. For example, cities may pay extra to improve the architectural design of parking lots and structures. The resulting in-lieu fees may be high. Although some cities charge high in-lieu fees, most set their in-lieu fees lower than the cost of providing a public parking space. Because the fixed cost for ramps, elevators, stairwells, and curb cuts can be spread among more spaces in large public parking structures, economies of scale in building these structures can further reduce the in-lieu fees.

3. *No guarantees.* Cities may intend to use the in-lieu fee revenue to finance public parking, but they do not guarantee when or where the parking spaces will be provided. To address this concern, some cities build public parking structures before receiving the in-lieu fees. The in-lieu fees are then used to retire the debt incurred to finance the structures. Other cities return the in-lieu fees if they do not provide the parking within a certain time. A city can also

UNITED STATES		UNITED KINGDOM
Berkeley, Calif.	Palo Alto, Calif.	Brent
Beverly Hills, Calif.	Pasadena, Calif.	Harrow
Carmel, Calif.	San Francisco, Calif.	Kingston upon Thames
Chapel Hill, N.C.	San Rafael, Calif.	Redbridge
Claremont, Calif.	State College, Penn.	Sutton
Concord, Calif.	Walnut Creek, Calif.	Waltham Forest
CulverCity, Calif.		
Davis, Calif.	<b>CANADA</b>	<b>GERMANY</b>
Hermosa Beach, Calif.	Burnaby, B.C.	Dresden
Kirkland, Wash.	Calgary, Alberta	Frankfurt
Lafayette, Calif.	Hamilton, Ontario	Hamburg
Lake Forest, Ill.	Kitchener, Ontario	Munich
Manhattan Beach, Calif.	Ottawa, Ontario	Nuremberg
Montgomery County, Md.	Toronto, Ontario	Würzburg
Mountain View, Calif.	Vancouver, B.C.	
Mill Valley, Calif.		<b>SOUTH AFRICA</b>
Orlando, Fla.	<b>ICELAND</b>	Johannesburg
Palm Springs, Calif.	Reykjavik	Port Elizabeth

**Table I** Surveyed cities with in-lieu parking fees.

delay collecting the in-lieu fees until the revenue is needed to construct the public parking.

4. *Fewer parking spaces.* In-lieu fees will reduce the parking supply if cities provide fewer than one public parking space for each in-lieu fee paid. A smaller parking supply can put an area at a competitive disadvantage. Cities may not provide one public parking space for each in-lieu fee paid, but if a city uses in-lieu fees to build public parking spaces rather than grant variances to reduce parking requirements, the in-lieu policy will increase rather than decrease the parking supply. Even if an in-lieu policy does reduce the parking supply, shared public parking reduces the parking supply needed to meet the sum of all individual peak parking demands.

While the developers' concerns cannot be ignored, officials in most of the surveyed cities said that the fees had become a form of administrative relief for developers who do not want to provide the required parking spaces. In practice, the in-lieu fees have benefitted developers by offering them an alternative to building expensive parking spaces.

### How Cities Set the Fees

Cities use two basic approaches to set their in-lieu fees. The first is to calculate the appropriate fee per space on a case-by-case basis for each project. The second is to have a uniform fee per space for all projects.

One city has employed both methods. Until 1994, Beverly Hills used the first approach – a specific fee for each project. The in-lieu fee for a project was the estimated land-and-construction cost per space to build a nearby public parking structure. Between 1978 and 1992, developers paid in-lieu fees for 52 parking spaces. The per-space fee set for each project was the sum of (1) the value of 60 square feet of land within a 300-foot radius of the site, and (2) the average construction cost per space in municipal parking structures. The average fee was \$37,000 per space, and the highest was \$53,000 per space. Therefore, in the extreme case, a developer was willing to pay the city \$53,000 for the right not to provide a parking space (Beverly Hills 1992).

This case-by-case procedure required a land-value appraisal to estimate the cost of public parking near each project that applied to pay the fee. After waiting four to six months to be notified of the fee, applicants usually appealed to the City Council to reduce it. Developers complained that not knowing the fee until after the appraisal created uncertainty in project planning. The case-by-case approach was complicated, time-consuming, and expensive.

To address these problems, Beverly Hills adopted the second approach in 1994 – it set uniform fees for all projects. These new fees are easier for the city to administer and for developers to use. Developers can easily incorporate the fee in a financial analysis and decide whether to provide the required parking or pay the fee. Thirty-seven of the 46 surveyed cities set uniform fees, probably because of their certainty, simplicity, and equity.<sup>4</sup>

Most cities' in-lieu fees do not cover the full cost of providing a public parking space.<sup>5</sup> Cities aim to set their fees high enough

to pay for public parking, yet low enough to attract development. Most cities have no explicit policy regarding how often to revise their fees, and some cities' fees have not changed for many years. A few cities automatically link their fees to an index of construction costs. For example, Beverly Hills and Palo Alto adjust their fees annually by the ENR Construction Cost Index, a measure of cost inflation in the construction industry.

Kirkland has two unusual in-lieu options. Developers can pay \$6,000 per parking space not provided, and the subsequent owners must purchase one parking permit in a public lot for every three spaces not provided (because the city estimates that employees use one-third of the required parking spaces). Alternatively, developers pay no initial in-lieu fee but subsequent owners must purchase a parking permit in a public lot for each space not provided. This annual option reduces the capital cost of development and encourages the use of public parking. A property owner may cancel the annual agreement at any time by providing the required on-site parking.

German cities often have a graduated schedule of in-lieu fees (*Ablösebeträge*). The fees are highest in the city center and decline with distance from the center. For example, Hamburg's fee is \$20,705 per parking space in the city center, and \$11,300 in the area surrounding the center.

Vancouver has the most sophisticated method for calculating its in-lieu fee (\$9,708 per space). This fee is the parking subsidy implicit in constructing a new public parking space, as measured by: (1) the land-and-construction cost per space in a public parking structure, minus (2) the present discounted value of the net operating income per space during the expected 30-year life of the structure, minus (3) the present discounted value of the residual property value of the structure, per space, after 30 years. The in-lieu fee is thus the expected net present cost per space – all parking costs minus all parking revenues – over the structure's life. Developers who pay the fees do not subsidize the city, and the city does not subsidize developers. Instead, developers subsidize parking.

To summarize, some cities set the fees on a case-by-case basis, but most set uniform fees for all development. Cities use a wide variety of methods to set their in-lieu fees, which range from \$2,000 to \$27,520 per parking space not provided.

### Who Decides Whether to Provide Parking or Pay Fee?

Most cities allow developers to choose whether to pay the fee or provide the parking, but a few cities *require* developers to pay the fee rather than provide the parking. Officials in these latter cities cited several reasons for requiring developers to pay the fees: to centralize parking facilities, put more of the parking supply under public management, encourage shared parking, discourage the proliferation of surface parking lots, emphasize continuous shopfronts, improve pedestrian

circulation, reduce traffic congestion, and improve urban design.<sup>6</sup>

Some cities allow property owners to remove existing required spaces by paying in-lieu fees. This option consolidates scattered parking spaces, facilitates reinvestment in older buildings, and encourages more efficient use of scarce land previously committed to surface parking.

Most American cities reduce their parking requirements in the central business district (CBD). In contrast, German cities often have uniform parking requirements throughout the city, but allow developers in the CBD to provide only part of the required parking, and require them to pay fees for the rest. For example, developers may provide at most 25 percent of the parking required for land uses in the center of Hamburg, and must pay fees in lieu of providing the rest of the parking.

In-lieu fees in the United States are legally justified by the nexus between the fees and the cost of providing public parking spaces. American cities therefore offer the in-lieu option only where they are prepared to spend the fee revenue to provide new public parking facilities. The nexus argument does not necessarily imply that the in-lieu revenue must be used to provide public parking, however, because a variety of transportation improvements can substitute for more parking. For example, British and German cities often use the in-lieu revenue to improve public transportation.

#### ■ THE IMPACT FEES IMPLICIT IN MINIMUM PARKING REQUIREMENTS

Parking requirements resemble impact fees. Many cities require developers to pay impact fees to finance public infrastructure – such as roads and schools – that development makes necessary. In *Regulation for Revenue*, Alan Altshuler and José Gómez-Ibáñez (1993) define these impact fees as "mandated expenditures by private land developers, required as a price for their obtaining regulatory permits, in support of infrastructure and other public services" (vii).

Parking requirements resemble impact fees because developers provide the required infrastructure – parking spaces – to obtain building permits. In-lieu parking fees also resemble impact fees because developers pay the fees to obtain building permits, and cities then use the revenue to pay for public infrastructure – parking spaces – that the development makes necessary. When cities require developers to pay the fees rather than provide the parking, the in-lieu fees *are* impact fees.

We can use the in-lieu fees to estimate the impact fees implicit in parking requirements. Impact fees are usually levied per square foot of building area, while in-lieu fees are levied per required parking space not provided. To compare in-lieu fees with impact fees, we must first convert the in-lieu fees into a cost per square foot of building area. We can do this because cities usually require parking spaces in proportion to building area (on the assumption that building area determines parking demand). The in-lieu parking fees per square foot of building area reveal the impact fees implicit in the parking requirements themselves.

#### Impact Fees for Office Buildings

The parking impact fee for a land use depends on (1) the parking requirement and (2) the in-lieu fee. Table 2 presents the in-lieu fees and parking requirements for one land use – office buildings in the CBD – for 29 cities in the United States, Canada, the United Kingdom, Germany, South Africa, and Iceland.<sup>7</sup> The last column shows the parking impact fees implicit in the parking requirements for office buildings in these cities.<sup>8</sup>

The first row shows that Palo Alto's in-lieu fee is \$17,848 per required parking space not provided. Palo Alto requires four parking spaces per 1,000 square feet of gross floor area for office buildings, so the in-lieu fee is equivalent to an impact fee of \$71 per square foot of office space ( $4 \times \$17,848 \div 1,000$ ). A developer who does not provide any parking must pay the city a parking impact fee of \$71 per square foot of office space.

The parking impact fees range from \$71 per square foot in Palo Alto to \$2 per square foot in Waltham Forest. The median parking impact fee is \$25 per square foot of office space in the U.S. cities and \$10 per square foot in the Canadian cities. U.S. cities have higher parking impact fees because they require more parking, not because they have higher in-lieu fees. The median parking requirement is 2.9 spaces per 1,000 square feet in the U.S. cities but only one space per 1,000 square feet in the Canadian cities. The median in-lieu fee is \$9,125 per space in the U.S. cities and \$9,781 per space in the Canadian cities.

The parking impact fees outside North America range widely. Three British cities have high impact fees (\$33 to \$48 per square foot) because their in-lieu fees are high. Another British city has the lowest impact fee in the table (\$2 per square foot) because both its in-lieu fee and its parking requirement are low.<sup>9</sup> The impact fees in Germany (\$32 per square foot) and Iceland (\$28 per square foot) are high because their in-lieu fees are high. The parking impact fee in South Africa (\$4 per square foot) is low because its in-lieu fee is low.

Do planners consider the cost of a parking space when they decide how many spaces to require? If they do, cities with higher in-lieu fees should require fewer parking spaces. But the coefficient of correlation between in-lieu fees and parking requirements in Table 2 is only 0.06, which suggests a random relationship between the cost of a parking space and the number of spaces required. Cost is no concern, it seems, when planners set parking requirements.

The average parking impact fee for the U.S. cities in Table 2 is \$31 per square foot, which dwarfs the impact fees levied for all other public purposes. A 1991 survey of 100 U.S. cities found that the impact fees for all purposes (roads, schools, parks, water, sewers, flood control, and the like) averaged \$6.97 per square foot of office buildings (see Altshuler and José Gómez-Ibáñez 1993, 40).<sup>10</sup> The average



CITY	IN-LIEU PARKING FEE (\$/space)	LAND USE	PARKING REQUIREMENT (spaces per 1,000 square feet)	PARKING IMPACT FEE (\$/square foot)
(1)	(2)	(3)	(4)	(5)=(2)X(4)/1,000
Palo Alto, Calif.	\$17,848	Offices	4.0	\$71
Beverly Hills, Calif.	\$20,180	Offices	2.9	\$59
Walnut Creek, Calif.	\$16,373	Offices	3.3	\$55
Kingston upon Thames, U.K.	\$20,800	Offices	2.3	\$48
Carmel, Calif.	\$27,520	Offices	1.7	\$46
Mountain View, Calif.	\$13,000	Offices	3.0	\$39
Sutton, UK	\$13,360	Offices	2.7	\$36
Harrow, UK	\$14,352	Offices	2.3	\$33
Hamburg, Germany	\$20,705	Offices	1.5	\$32
Lake Forest, Ill.	\$ 9,000	Offices	3.5	\$32
Mill Valley, Calif.	\$ 6,751	Offices	4.4	\$30
Palm Springs, Calif.	\$ 9,250	Offices	3.1	\$28
Reykjavik, Iceland	\$13,000	Offices	2.2	\$28
Claremont, Calif.	\$ 9,000	Offices	2.9	\$26
Concord, Calif.	\$ 8,500	Offices	2.9	\$24
Davis, Calif.	\$ 8,000	Offices	2.5	\$20
Orlando, Fla.	\$ 9,883	Offices	2.0	\$20
Kitchener, Ontario	\$14,599	Offices	1.3	\$19
Chapel Hill, N.C.	\$ 7,200	Offices	2.5	\$18
Kirkland, Wash.	\$ 6,000	Offices	2.9	\$17
Hermosa Beach, Calif.	\$ 6,000	Offices	2.6	\$16
Berkeley, Calif.	\$10,000	Offices	1.5	\$15
Burnaby, British Columbia	\$ 7,299	Offices	2.0	\$15
Vancouver, British Columbia	\$ 9,708	Offices	1.0	\$10
State College, Penn.	\$ 5,850	Offices	1.3	\$ 8
Ottawa, Ontario	\$10,043	Offices	0.7	\$ 7
Calgary, Alberta	\$ 9,781	Offices	0.7	\$ 7
Port Elizabeth, South Africa	\$ 1,846	Offices	2.3	\$ 4
Waltham Forest, U.K.	\$ 2,000	Offices	0.9	\$ 2
MEAN	\$11,305		2.3	\$26
MEDIAN	\$ 9,781		2.3	\$24

In-lieu fees and parking requirements are for the city center in 1996. In-lieu fees and impact fees are expressed in US\$.  
 To obtain the parking requirement in spaces per 100 square meters, multiply the required spaces in Column 4 by 1.076.  
 To obtain the parking impact fee in dollars per square meter, multiply the impact fee in Column 5 by 10.76.

**Table 2.** Minimum parking requirements considered as impact fees (for office buildings).

CITY	IN-LIEU PARKING FEE	LAND USE	PARKING REQUIREMENT	PARKING IMPACT FEE
	(\$/space)		( spaces per 1,000 square feet)	( \$/square foot)
(1)	(2)	(3)	(4)	(5)=(2)x(4)/1,000
Beverly Hills, Calif.	\$20,180	Restaurant	22.2	\$448
Palm Springs, Calif.	\$ 9,250	Cabaret	28.6	\$264
Mountain View, Calif.	\$13,000	Assembly Hall	18.0	\$234
Kingston upon Thames, U.K.	\$20,800	Food Superstore	7.7	\$160
Davis, Calif.	\$ 8,000	Funeral Home	20.0	\$160
Sutton, U.K.	\$13,360	Food Superstore	8.5	\$114
Kitchener, Ontario	\$14,599	Manufacturing	7.7	\$112
Calgary, Alberta	\$ 9,781	Billiard Parlor	10.3	\$101
Ottawa, Ontario	\$10,043	Church	9.8	\$ 98
Claremont, Calif.	\$ 9,000	Theater	10.0	\$ 90
Hermosa Beach, Calif.	\$ 6,000	Theater	13.0	\$ 78
Burnaby, British Columbia	\$ 7,299	ArtGallery	10.3	\$ 75
Palo Alto, Calif.	\$17,848	All Uses	4.0	\$ 71
Mill Valley, Calif.	\$ 6,751	Assembly Hall	10.0	\$ 68
Harrow, U.K.	\$14,352	Garden Center	4.6	\$ 67
Hamburg, Germany	\$20,705	Garden Center	3.1	\$ 64
Walnut Creek, Calif.	\$16,373	Nonresidential	3.3	\$ 55
Kirkland, Wash.	\$ 6,000	Restaurant	8.0	\$ 48
Carmel, Calif.	\$27,520	Commercial	1.7	\$ 47
Concord, Calif.	\$ 8,500	Restaurant	4.0	\$ 34
Port Elizabeth, South Africa	\$ 1,846	Recreation Hall	18.6	\$ 34
Reykjavik, Iceland	\$13,000	Nonresidential	2.2	\$ 28
Lake Forest, Ill.	\$ 9,000	Restaurant	2.5	\$ 23
Orlando, Fla.	\$ 9,883	Nonresidential	2.0	\$ 20
Chapel Hill, N.C.	\$ 7,200	Offices	2.5	\$ 18
Berkeley, Calif.	\$10,000	Nonresidential	1.5	\$ 15
Vancouver, British Columbia	\$ 9,708	Nonresidential	1.0	\$ 10
Waltham Forest, U.K.	\$ 2,000	Shops	4.5	\$ 9
State College, Penn.	\$ 5,850	All Uses	1.3	\$ 8
MEAN	\$11,305		8.3	\$ 88
MEDIAN	\$ 9,781		7.7	\$ 67

In-lieu fees and parking requirements are for the city center in 1996. In-lieu fees and impact fees are expressed in US\$. To obtain the parking requirement in spaces per 100 square meters, multiply the required spaces in Column 4 by 1.076. To obtain the parking impact fee in dollars per square meter, multiply the numbers in Column 5 by 10.76. The land uses are those with the highest minimum parking requirements in each city.

**Table 3** Minimum parking requirements considered as impact fees (for land uses with the highest parking requirements).

parking impact fee for office buildings is thus 4.4 times the average impact fee for all other public purposes combined. If impact fees reveal a city's priorities for public services, many cities' highest priority is free parking.<sup>11</sup>

The 1995 Nationwide Personal Transportation Survey found that the average round-trip distance traveled to work in the United States was 23.2 miles.<sup>12</sup> Because new cars averaged 28.6 miles per gallon of gasoline in 1995, the average commute

in the average new car consumed 0.81 gallons of gasoline a day, or 17.8 gallons a month for commuting 22 days a month. The average price of gasoline in the United States was \$1.21 a gallon in 1995.<sup>13</sup> At this combination of commute distance, fuel efficiency, and fuel price, the fuel cost of commuting by car is \$22 a month. In this case, a parking subsidy of more than \$22 a month is worth more than free gasoline for commuting.

The average in-lieu parking fee in the United States in Table 2 is \$11,305 per space. At an interest rate of 4 percent

amortized over 30 years, this in-lieu fee is equivalent to a capital cost of \$54 per parking space per month. This cost estimate is conservative because the interest rate is low and operating expenses are ignored. Nevertheless, it shows that parking requirements based on the demand for free parking double the cost of the gasoline used for driving to and from the required parking.

### **Impact Fees for Land Uses with the Highest Minimum Parking Requirements**

Table 3 shows each city's parking impact fee for the land use with the highest parking requirement. The in-lieu fees in Table 3 are the same as those in Table 2 for office buildings because each city uses the same in-lieu fee for all land uses. The first row shows that Beverly Hills' in-lieu fee is \$20,180 per required parking space not provided, and that Beverly Hills requires 22.2 parking spaces per 1,000 square feet of restaurant space (one space per 45 square feet). Therefore, the parking requirement and the in-lieu fee together impose a parking impact fee of \$448 per square foot of restaurant space ( $22.2 \times \$20,180 \div 1,000$ ). A developer who does not provide any parking must pay the city an impact fee of \$448 per square foot of restaurant space.

The impact fees in Table 3 are higher than in Table 2 because the parking requirements for the land uses in Table 3 are higher. For example, Mountain View's highest parking requirement (for assembly halls) is six times its parking requirement for office buildings, so its parking impact fee increases from \$39 per square foot in Table 2 to \$234 per square foot in Table 3.

The parking impact fees range from \$448 per square foot of restaurant space in Beverly Hills to \$8 per square foot for any land use in State College, Pennsylvania. The great variation in the cities' minimum parking requirements explains most of this variation in the parking impact fees.<sup>14</sup> For example, Palm Springs and Vancouver have similar in-lieu fees, but Palm Springs' parking impact fee is 27.1 times Vancouver's because Palm Springs' highest parking requirement is 28.6 times Vancouver's highest parking requirement.

If a parking requirement is high, reducing the in-lieu fee does not make the parking impact fee low. For example, to encourage the expansion of restaurants that have been in business for at least two years, Beverly Hills offers a reduced in-lieu fee of \$6,265 per space, which is 35 percent of the construction cost per space for municipal parking structures, excluding land cost. Beverly Hills requires one parking space per 45 square feet of restaurant area, so this reduced in-lieu fee is equivalent to an impact fee of \$139 per square foot of restaurant area ( $\$6,265 \div 45$ ). The in-lieu fee is far below the cost of providing a public parking space; but the parking impact fee is still high.<sup>15</sup>

### **Do In-Lieu Fees Impose a Cost on Developers?**

In-lieu fees do not impose a cost on developers. Minimum parking requirements impose the cost, and in-lieu fees merely give developers an alternative to providing the required parking. If the in-lieu fee equals the cost of providing a parking space, the parking impact fee shows the cost of complying with the parking requirement.

Parking requirements would not impose a cost if developers voluntarily provided all the parking that zoning requires. But if developers voluntarily provided *all* the parking that zoning requires, parking requirements would be pointless. Some developers may provide more parking than required, but studies in the Los Angeles and Chicago regions have found that developers generally provide only enough parking to satisfy the zoning requirements. City officials, developers, lenders, leasing agents, and tenants all assume that planners know how much parking each land use needs (see Willson 1995; Chicago Regional Transportation Authority 1998).

In my own experience as a member of a Design Review Board in Los Angeles, I have reviewed the plans for all development projects in one part of the city, Westwood, for the past six years. I have seen many cases where the required parking limited a project's density or disfigured its design, but I have never seen a project that provided more parking than required.<sup>16</sup>

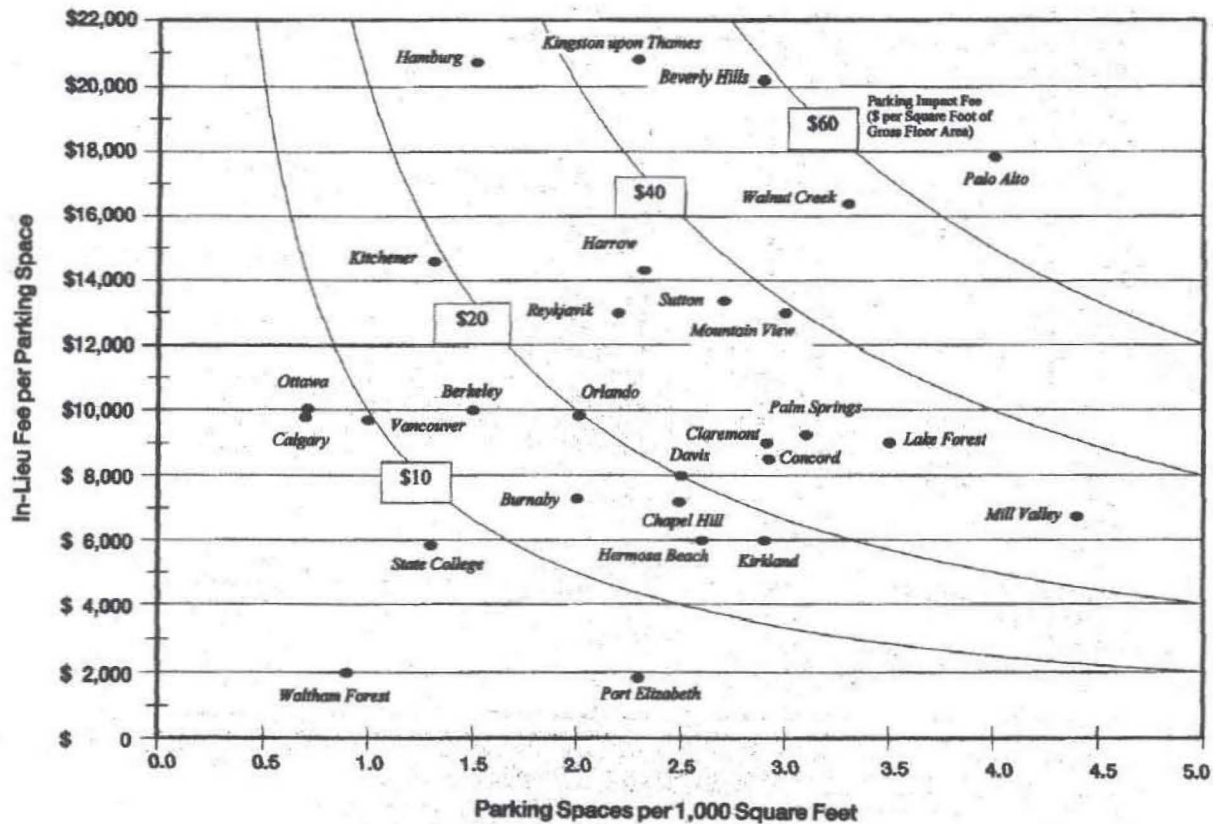
The impact fees in Tables 2 and 3 underestimate the cost of complying with parking requirements because developers who provide the required parking must also pay property taxes and operating costs for the privately owned spaces. The impact fees also understate the cost of complying with parking requirements if cities set their in-lieu fees below the cost of providing a parking space. Hamilton, Lake Forest, and Toronto set their fees at half the estimated land-and-construction cost of providing parking spaces.<sup>17</sup> Mountain View, Orlando, and Walnut Creek set their fees at the construction cost per space in parking structures, excluding land cost.<sup>18</sup>

When asked why they set the in-lieu fee below the cost of providing a parking space, city officials typically answered that the fee would be "too high" if the city charged the full cost. When the cost of required parking is hidden in the cost of development, cost does not seem to matter. But when the cost of required parking is made explicit in cash, everyone can see that it is "too high."

### **Parking Requirements, In-Lieu Fees, and Impact Fees**

We can use the data in Tables 2 and 3 to show the relationships among parking requirements, the cost of parking spaces, and impact fees, as seen in Figure 1, which uses the data for office buildings. The horizontal axis shows the parking requirement in spaces per 1,000 square feet of gross floor area, and the vertical axis shows the fee per parking space not provided. Each equal-impact-fee (isocost) curve





**Figure 1.** Parking impact fees as a function of parking requirements and in-lieu fees (for office buildings).

shows combinations of parking requirements and in-lieu fees that produce the same impact fee. For example, the lowest curve shows that a requirement of one space per 1,000 square feet and an in-lieu fee of \$10,000 per space together create an impact fee of \$10 per square foot of floor area, as do all other combinations of parking requirements and in-lieu fees along the same curve.<sup>19</sup>

A horizontal band of cities have similar in-lieu fees ranging from \$6,000 to \$10,000 per parking space, but their parking impact fees differ greatly because their parking requirements differ greatly. For example, Lake Forest and Calgary have similar in-lieu fees, but Lake Forest's parking impact fee is more than four times Calgary's because Lake Forest requires 3.5 spaces per 1,000 square feet while Calgary requires only 0.7 spaces per 1,000 square feet.

Cities with dissimilar in-lieu fees can have similar parking impact fees. For example, Mill Valley's in-lieu fee is less than a third of Hamburg's; but its parking impact fee is similar to Hamburg's because Mill Valley requires 4.4 spaces per 1,000 square feet while Hamburg requires only 1.5 spaces per 1,000 square feet.

Figure 2 arrays cities according to their in-lieu fees and

parking requirements in Table 3 (i.e., for land uses with the highest parking requirements). Because the coefficient of correlation between the cities' impact fees in Tables 2 and 3 is only 0.43, the cities' relative positions shift substantially from Figure 1 to Figure 2. In more ways than one, parking impact fees are all over the map.

This all-over-the-map aspect of parking impact fees should not surprise us, given the haphazard nature of parking requirements. Explaining how planners set parking requirements, Robert Weant and Herbert Levinson (1990) say:

Most local governments, through their zoning ordinances, have a parking supply policy that requires land uses to provide sufficient off-street parking space to allow easy, convenient access to activities while maintaining free traffic flow. The objective is to provide enough parking space to accommodate recurrent peak-parking demands .... For the purpose of zoning ordinance applications, parking demand is defined as the accumulation of vehicles parked at a given time as the result of activity at a given site (35-37).

That is, planners count the cars parked at existing land uses, define the maximum number of parked cars as parking

demand, and then require new land uses to supply at least enough parking spaces to satisfy this demand. Without considering either the cost or the price of parking, urban planners set minimum parking requirements to satisfy the peak parking demand.

Because high parking requirements increase development costs, they might be interpreted as a tacit way for cities to control growth. But if the goal is growth control, high parking requirements have a serious unintended consequence. All new development will have plenty of free parking, which will increase trip generation and the associated traffic. If growth control is intended to limit traffic, high parking requirements are a perverse way to control growth.

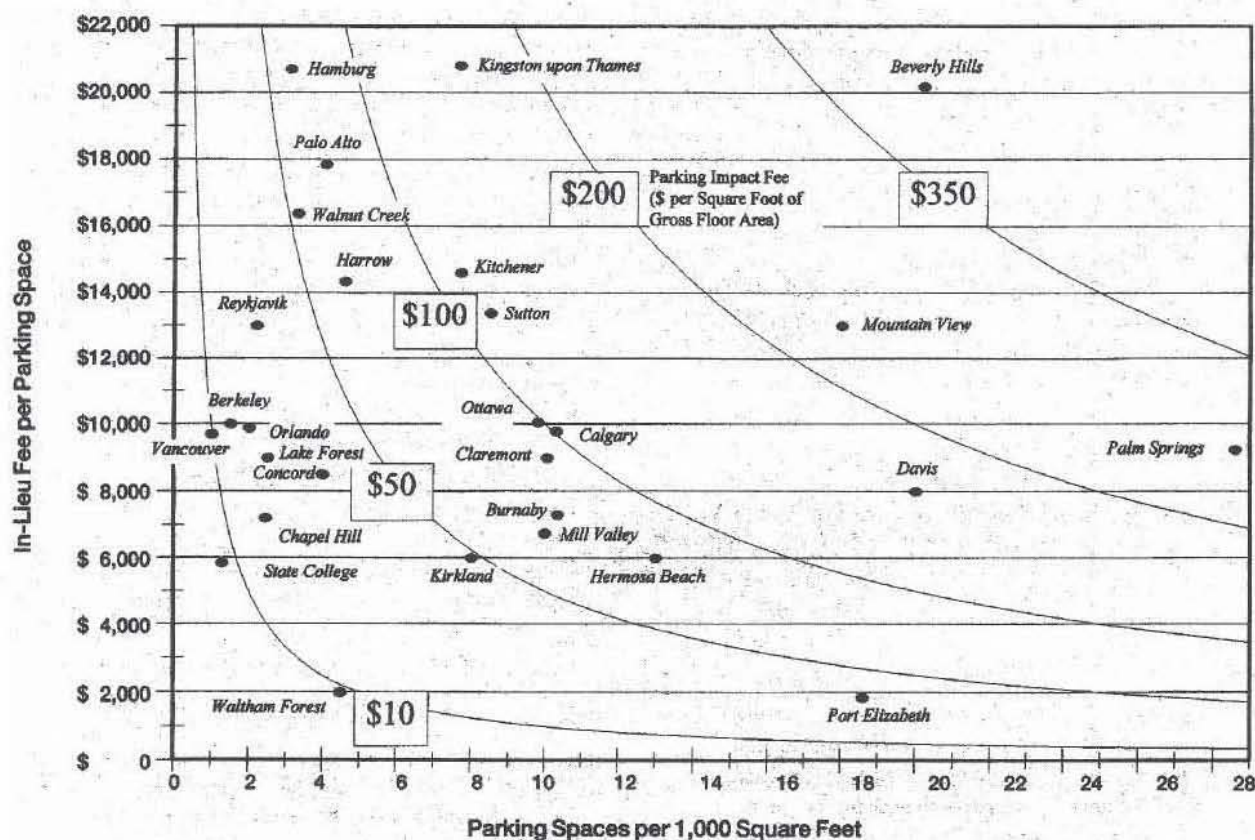
High parking requirements might also be explained as a response to high parking demand. But demand depends on price, and the high cost of providing parking should cause planners to ask, "At what price is demand being estimated?" Parking requirements based on the observed demand for parking typically require enough parking spaces to satisfy the demand for *free* parking.

## ■ AN ANALOGY: PTOLEMAIC ASTRONOMY

As experience has accumulated, planners have made progress in predicting the peak demand for parking at different land uses. This progress in planning resembles the progress made in astronomy from the time of Ptolemy through the medieval period. Astronomers gradually became more accurate in predicting the motion of stars and planets, but they fundamentally misunderstood what they were trying to explain. Thomas Kuhn (1957) says:

accuracy was invariably achieved at the price of complexity ... and the increased complexity gave only a better approximation to planetary motion, not finality. No version of the system ever quite withstood the test of additional refined observations (74).

Ptolemaic astronomers believed that the earth was at the center of the universe, and that everything else rotated about the earth. This theory explained the motion of stars, but the motion of planets was a puzzle. The word *planet* stems



**Figure 2** Parking impact fees as a function of parking requirements and in-lieu fees (for land uses with the highest parking requirements).

from the Greek word meaning *wanderer*, and astronomers developed complex mathematical devices—such as epicycles—to explain the planets' wandering behavior. But the fundamental theory was faulty, and more accurate observations of planetary motion always showed that the theory's predictions were wrong.

Similarly, many planners seem to believe that parking is at the center of urban development. Planners have gradually become more accurate in predicting parking demand as a function of land use, but this greater accuracy has invariably been achieved at the price of complexity. For example, the Planning Advisory Service of the American Planning Association has published three surveys of parking requirements in American cities. The 1964 survey reported 368 different requirements for 30 different land uses. The 1971 survey reported 609 different requirements for 83 different land uses. The 1991 survey reported 648 different requirements for 179 different land uses.<sup>20</sup> Despite this growing complexity, no one can accurately predict how many parking spaces any land use needs without considering the price of parking. For the same land use, the parking requirements in Table 3 vary between one and 28.6 parking spaces per 1,000 square feet.<sup>21</sup>

The growing complexity extends well beyond more requirements for more land uses. Some cities allow shared parking for a combination of land uses when the peak parking demands occur at different times. Some cities allow valet and tandem parking to increase parking capacity. All cities grant variances from parking requirements to accommodate special circumstances. Adding to the complexity, urban planners have invented many pseudo-scientific terms to describe observed but poorly understood phenomena: parking deficit, parking generation, parking need, parking overflow, parking ratio, parking spillover, parking turnover, peak parking factor, shared parking, and underparked.

Confusion reigns, and planners cannot even agree on whether to require or restrict parking. Consider the diametrically opposed approaches in Los Angeles and San Francisco. Los Angeles requires a minimum number of spaces, while San Francisco restricts the maximum number of spaces. For an auditorium in the CBD, Los Angeles requires as a minimum 50 times more parking spaces than San Francisco allows as the maximum.<sup>22</sup> These minimums and maximums exemplify the Soviet planning slogan, "What is not made compulsory must be prohibited."

Planners usually require a minimum number of parking spaces, and they sometimes restrict the maximum number of parking spaces, but they almost never take a hands-off approach to the number of parking spaces. Perhaps some planners unconsciously fear that critics may ask, "If planners don't even know how many parking spaces to require, what *do* they know?" Or perhaps parking requirements are simply a professional confidence trick that planners have played not only on others but also on themselves,

Parking requirements stem from a belief that urban planners know how many parking spaces every land use needs. Planners *can* rationally regulate many dimensions of parking that affect the public, such as curb cuts, guidance, handicapped access, landscaping, layout, location, pedestrian amenity, setback, signage, stormwater runoff, and urban design. Planners can and should regulate the *quality* of parking. But planners *cannot* rationally regulate the *number* of parking spaces without considering the price and cost of parking and the wider consequences for transportation and land use.

By comparing urban planners to Ptolemaic astronomers, I am not questioning planners' abilities. Ptolemaic astronomers were diligent scientists, but in considering the earth to be the center of the universe they were making a fundamental mistake. Similarly, in requiring a minimum number of off-street parking spaces for all land uses, urban planners are making a fundamental mistake. The high impact fees implicit in minimum parking requirements reveal the high cost of this mistake.

#### ■ AN ALTERNATIVE: REDUCE DEMAND RATHER THAN INCREASE SUPPLY

Minimum parking requirements lack a theoretical basis, and even their empirical basis is weak. But reform will be difficult because parking requirements are entrenched in planning practice and legislated in zoning ordinances. Nevertheless, the emergence of in-lieu fees suggests that change is possible. In-lieu fees also suggest another promising option: *allow developers to reduce parking demand rather than increase the parking supply.*

#### An Example: Transit Passes in Lieu of Parking Spaces

Offering free transit passes to commuters will reduce the demand for parking at work. Therefore, a city could reduce the parking requirements for developments where the developer commits to provide transit passes for commuters who do not drive to work.

Suppose that providing free transit passes to the employees at a site would reduce parking demand at the site by one parking space per 1,000 square feet. In this case, a covenant to provide free transit passes to employees at the site is an appropriate alternative to providing one required parking space per 1,000 square feet.<sup>23</sup>

The in-lieu transit option would be simplest where firms can buy a blanket transit pass for all employees. For example, some transit agencies offer employers the option to buy "Eco Passes" that allow all their employees to ride free on all local transit lines. A city could therefore reduce the parking requirements for a building where all employees are offered Eco



LOCATION	ANNUAL PRICE PER EMPLOYEE		
	1-99 Employees	100-4,999 Employees	5,000+ Employees
Downtown San Jose	\$80	\$60	\$40
Areas with bus & light rail	\$60	\$40	\$20
Areas with bus only	\$40	\$20	\$10

**Table 4.** *Eco Pass price schedule, Santa Clara Valley Transportation Authority.*

Passes. The Eco Pass is a tax-deductible expense for employers and a tax-free benefit for employees.

Transit agencies price Eco Passes according to probability of use. The price per employee is low because many employees do not ride transit even when it is free. Employers can therefore buy transit passes for all employees at a low cost. For example, as shown in Table 4, the Santa Clara Valley Transportation Authority (SCVTA) in California's Silicon Valley charges from \$10 to \$80 per employee per year for the Eco Passes, depending on an employer's location and number of employees.<sup>24</sup>

An example can explain Eco Pass pricing. Suppose (1) the price of a conventional transit pass is \$400 a year, (2) employers offer free passes to commuters who ride transit, and (3) 20 percent of commuters ride transit. Per 100 employees, employers would pay \$8,000 a year for 20 conventional transit passes (20 x \$400), or \$80 per employee per year (\$8,000 ÷ 100). The transit agency can therefore sell Eco Passes for 100 employees at a price of only \$80 per employee per year, carry the same number of riders, and receive the same \$8,000 a year in total revenue that it would receive from the sale of conventional transit passes at \$400 a year for 20 employees.

Because frequent riders often buy transit passes, transit agencies must price these passes on the assumption of frequent use. And because transit agencies price transit passes to cover the cost imposed by frequent riders, infrequent riders will not buy them. In contrast, Eco Passes are priced like employer paid insurance that covers every member of a defined population. Adverse selection does not occur when all employees receive Eco Passes, and the price of an Eco Pass is therefore much lower than the price of a conventional transit pass.<sup>25</sup> For example, the SCVTA's price for its Eco Pass (\$10 to \$80 per employee per year) is only 2 percent to 19 percent of the price for its conventional transit pass (\$420 a year).

Providing Eco Passes for employees – a demand-side subsidy – is different from subsidizing the transit system as a whole – a supply-side subsidy. Providing Eco Passes for all employees at a site increases transit use to that site and reduces parking demand at that specific site. This reduction in parking demand justifies a smaller parking supply at the site that provides the Eco Passes. In contrast, subsidizing the system as a whole would improve transit service but would not significantly reduce parking demand at any specific site. Therefore, subsidizing the system would not justify a smaller parking sup-

ply at the site that pays the subsidy.

Providing Eco Passes instead of required parking spaces converts a supply-side subsidy for parking into a demand-side subsidy for transit. The appropriate rate of substitution between Eco Passes and parking spaces depends on how shifting subsidies from parking to transit will reduce parking demand. Cities can offer a greater reduction in parking requirements in the CBD) and other transit-oriented districts because Eco Passes will reduce parking demand more at sites that have better transit service. Providing Eco Passes instead of parking spaces will benefit these transit-oriented districts by allowing higher density without more vehicle traffic.

### The Cost of Reducing Parking Demand

Reducing parking demand can cost much less than increasing the parking supply. Employers in Silicon Valley pay \$10 to \$80 per employee per year for Eco Passes. If there are four employees per 1,000 square feet of office space, Eco Passes would cost from 4 cents to 32 cents per square foot of office space per year.<sup>26</sup> How does this cost of offering Eco Passes to all employees compare with the resulting reduction in the capital cost of providing the required parking spaces?

A survey of commuters whose employers offer Eco Passes found that the solo-driver share fell from 76 percent before the passes were offered to 60 percent afterward (Santa Clara Valley Transportation Authority 1997). The transit mode share for commuting increased from 11 percent to 27 percent. These mode shifts reduced commuter parking demand by approximately 19 percent.

The SCVTA serves two of the surveyed cities that have in-lieu parking fees (Mountain View and Palo Alto). As Table 2 shows, the parking impact fee for office buildings is \$39 per square foot of office space in Mountain View and \$71 per square foot of office space in Palo Alto. If the Eco Passes reduce parking demand by 19 percent, they will reduce the capital cost of providing the required parking spaces by \$7.41 per square foot of office space in Mountain View and by \$13.49 per square foot of office space in Palo Alto.<sup>27</sup>

If spending between 4 cents and 32 cents a year to provide Eco Passes will reduce the capital cost of required parking by between \$7.41 and \$13.49, the annual cost of the Eco Passes ranges from 0.3 percent to 4.3 percent of the reduction in the capital cost of parking. That is, spending \$1 every year for transit will save between \$23 and \$337 for the initial capital cost of parking. Eco Passes will also reduce the operating and maintenance costs for parking because fewer spaces are required. The low cost of reducing parking demand compared with the high cost of increasing the parking supply shows that Eco Passes are a cost-effective fringe benefit. Eco Passes can greatly reduce the high cost of offering free parking.

Administering the Eco Pass option should be simpler than administering conventional in-lieu fees because cities would not need to construct, operate, and maintain parking structures. A property's transit-pass obligation could be

enforced by a covenant or conditional use permit for as long as the required parking is not provided. Monitoring compliance should be simple because public transit operators would have a strong financial incentive to ensure that property owners pay for the required transit passes.

### **The Benefits of Reducing Parking Demand**

Providing Eco Passes instead of parking spaces can yield benefits for developers, property owners, employers, commuters, and cities.

#### *Benefits to Developers and Property Owners*

Developers who pay conventional in-lieu parking fees receive no individual benefit beyond permission to build without providing the required parking. But developers who provide in-lieu Eco Passes also receive the individual benefit of free public transit for all tenants. If a developer provides fewer than the required number of parking spaces, the compensating amenity of free transit should increase a project's marketability.

Providing Eco Passes in lieu of parking spaces can also reduce the risk and improve the feasibility of project finance. The capital cost of parking is fixed regardless of building occupancy, and it is a heavy burden for a new building that is not fully leased. In contrast, the cost of Eco Passes varies according to the number of employees in the building, and the cost will be low if the building is not fully leased. Providing Eco Passes instead of parking spaces converts an up-front capital cost for parking into an annual cost for transit, and many developers may want to make this trade if offered the option.

#### *Benefits to Employers*

Eco Passes will save employers some of the money they now spend to subsidize parking. Suppose that Eco Passes cost \$40 per employee per year and that they reduce the demand for commuter parking by 19 percent (as found in the Silicon Valley). The Eco Passes will save more than \$40 per employee per year on parking subsidies if the employer had been spending more than \$211 per employee per year to subsidize parking, because reducing a parking subsidy of \$211 a year by 19 percent saves \$40 a year. Many employers spend far more than \$211 per year (\$17.60 per month) per employee to subsidize parking.<sup>28</sup> These employers can therefore offer free transit passes, continue to offer free parking, and save money.

#### *Benefits to Commuters*

Eco Passes clearly benefit commuters who ride transit to work, and they can also benefit commuters who usually drive to work. Drivers can consider the Eco Passes a form of insurance for days when their cars are not available. Eco passes offer commuters day-to-day flexibility in commuting and the choice between riding transit or driving to work is not a long-term

either-or commitment.

Employees can also use their Eco Passes for non-work trips. In the Silicon Valley survey, 60 percent of employees reported using their Eco Passes for trips other than commuting, with an average of four non-work trips a month.

#### *Benefits to Transit Operators*

Using unbuilt parking spaces to finance Eco Passes would increase transit ridership and transit revenue. Although Eco Pass programs are new, in 1997 employers purchased Eco Passes for 38,000 employees in Denver and 40,000 employees in Silicon Valley. If developers could provide Eco Passes instead of parking spaces, Eco Pass sales would undoubtedly increase. Permanent demand-side subsidies for transit financed by a reduction in the capital cost of supply-side subsidies for parking would provide a reliable revenue source for transit agencies.

If developers make long-term commitments to purchase Eco Passes, transit planners can improve service to the sites where they know transit demand will be strong. This service improvement will benefit all riders, not just Eco Pass holders, and it can attract additional riders who pay a full fare.

#### *Benefits to Cities*

As with conventional in-lieu fees, providing Eco Passes in lieu of parking spaces will improve urban design, reduce the need for variances, and help to preserve historic buildings and rehabilitate historic areas. Beyond these advantages, reducing the demand for parking rather than increasing the supply of parking will reduce traffic congestion, air pollution, and energy consumption – all at no cost if the existing transit has excess capacity.

### **Other In-Lieu Options to Reduce Parking Demand**

Cities could also allow in-lieu options for land uses other than employment sites. For example, some universities contract with their local transit agencies so their student identification cards serve as public transit passes, and these transit pass programs reduce the demand for parking on campus (Brown, Hess, and Shoup 1998). Cities could therefore allow a university to offer a transit pass program instead of required parking spaces.

A city could allow theaters and stadiums to offer free transit to all ticket holders instead of providing required parking spaces. For example, the University of Washington contracts with Seattle Metro so that ticket holders can show their game tickets to ride on any Metro transit service on the day of a game. The share of ticket holders arriving at Husky Stadium by transit increased from 4.2 percent in 1984 (the year before the transit agreement) to 20.6 percent in 1997 (University of Washington Transportation Office 1997).

A city could allow apartment developers to offer free transit passes for residents instead of providing some required parking spaces. In State College, Pennsylvania, one of the

cities with in-lieu fees, the Centre Area Transportation Authority contracts with apartment developers and owners to give all residents passes for the transit lines that serve the apartments. The passes are priced at approximately \$100 per apartment per year. Participating developers are encouraged to build transit amenities into their site designs (bus shelters and bus pull-off lanes). Apartment owners advertise these transit passes as a benefit they offer to tenants. The apartment transit passes should attract a niche market of those who are less likely to own cars, and should be especially appropriate for transit-oriented districts with good transit service and a reduced parking supply.

A city could allow hotels to offer free transit for guests instead of providing some required parking spaces. Beyond saving money on constructing parking spaces, offering free transit could help a hotel to attract a niche market of guests without cars. If hotels that offer free transit attract guests without cars, this would justify the smaller parking supply. Some hotels already offer free shuttles to popular destinations, or offer guests free tokens on public transit, and cities could reduce parking requirements in exchange for these policies.

Beyond offering transit passes, a city could allow developers and employers to take other measures to reduce parking demand. For example, offering employees the option to cash out employer-paid parking has been found to reduce parking demand by an average of 11 percent, at almost no added cost to employers.<sup>29</sup> Therefore, a city could reduce the parking requirement for sites where developers commit to a parking cash-out program.

Some cities allow property owners to remove existing parking spaces if they pay an in-lieu fee per required space removed. Cities could also allow owners to remove existing parking spaces if they offer transit passes and/or a parking cashout program. This in-lieu option would assist infill development, improve urban design, and increase urban density without increasing traffic.

Finally, a city could require the provision of transit passes and/or parking cash out at a site if the developer wished to provide more than the required number of parking spaces. That is, a developer would have to take steps to reduce parking demand in order to receive permission to increase the parking supply above what the zoning requires.

Allowing developers to reduce parking demand instead of increasing the parking supply is a logical extension of in-lieu fee programs. Nevertheless, none of the surveyed cities allows parking demand management as an alternative to providing parking spaces.

## ■ CONCLUSION: THE HIGH COST OF MINIMUM PARKING REQUIREMENTS

In-lieu fees unveil the high cost of parking requirements. The impact fees implicit in parking requirements dwarf the impact fees for all other public purposes combined. These high parking

impact fees should make it hard for planners to ignore the cost of parking requirements. Given the high cost of providing the required parking, planners should not uncritically assume that the demand for parking automatically justifies parking requirements. Viewed skeptically, minimum parking requirements subsidize cars and distort urban form.

In-lieu fees mitigate the damage caused by parking requirements. The in-lieu fees assist development on difficult sites, encourage shared parking, reduce the demand for variances, improve urban design, and support historic preservation. Beyond allowing developers to finance public parking spaces in lieu of private parking spaces, cities can allow developers to reduce parking demand rather than increase the parking supply. This further development of in-lieu fees will reduce traffic congestion, air pollution, and energy consumption. The option to reduce parking demand rather than increase the parking supply will benefit developers, property owners, employers, commuters, transit agencies, cities, and the environment.

*Author's Note: I would like to thank Ellison Alegre, Steven Bass Aaron Bernardin, Jeffrey Brown, Leland Burns, Eric Carlson, Peter Clark, Daniel Dermitzel Gregg Doyle, Elke Daugherty, Simon Fraser, Kay Gilbert, Genevieve Giuliano, Daniel Hess, Thomas Higgins, Kathleen Hiyaki, Eugene Kim, Nick Lester, Trent Lethco, Kristen Massey, Douglas Miller, Andrew Mondschein, Virginia Parks, William Pitkin, Paul Pinsker, Joshua Polston, Thomas Rice, Neal Richman, Jan Riel, Patricia Shoup, Seth Stark, Jay Sundu, Brian Taylor, Richard Willson, and Matthew Zisman for their many helpful suggestions. I am grateful to the United States Department of Transportation and the University of California Transportation Center for financial support.*

## ■ NOTES

1. *Monopoly*® is the trademark of Hasbro, Inc. for its real estate trading game. "Free Parking" is one of 40 spaces on the game board.
2. In 1990, the U.S. Department of Transportation conducted the Nationwide Personal Transportation Survey. For all automobile trips made on the previous day, the survey asked 48,000 respondents, "Did you pay for parking during any part of this trip?" Ninety-nine percent of the 56,733 responses to this question were "no." The responses outnumbered the respondents because some respondents made more than one automobile trip per day (Shoup 1995, 15).
3. The survey includes every in-lieu parking fee program found after searching the literature on parking requirements, sending e-mail requests to parking listservers, and asking the representatives of each city with in-lieu fees for additional leads (a "snowball" sample). Additional cities in Germany have in-lieu fees (*Ablösebeträge*), but as explained later most of these cities' fees are calculated on a case-by-case basis and therefore could not be used to calculate the parking impact fees shown in Tables 1 and 2. Planners in several of the surveyed cities were unaware that any other cities had in-lieu fees, and only four brief published references to in-lieu fees were found:

- Public Technology (1982), Higgins (1985), Weant and Levinson (1990), and Topp (1993).
4. Among the nine cities that set fees on a case-by-case basis, Culver City's fee is the assessed value of 300 square feet of land under the development. Hamilton's and Toronto's fees are half the land-and-construction cost of providing a new parking space near the development site. Johannesburg's fee is the land value of a surface parking space at the development site. Frankfurt's fee depends on the land-and-construction cost of a parking space, with a maximum fee of \$16,025. San Rafael's fee is the fair market value of the land that would otherwise have been devoted to the required off-street parking, plus the cost of paving and other improvements. Montgomery County allows developers to pay a property tax surcharge instead of providing the required parking.
  5. The method of setting the fees varies greatly among cities. Lake Forest's fee (\$9,000 per space) is half the city's land-and-construction cost per space in surface lots. The fees in Mountain View (\$13,000 per space) and Orlando (\$9,883 per space) are the cities' construction cost per space in parking structures, excluding land cost. Palo Alto's fee (\$17,848 per space) is the construction cost per space added by a parking structure, after deducting the number of surface spaces lost when the structure is built. Walnut Creek's fee (\$16,373 per space) is 75 percent of the construction cost per space in a public parking structure, excluding land cost. The fees in Kingston upon Thames (\$20,800) and Sutton (\$12,800) are the land and construction cost per space in parking structures on the fringe of the town center. Port Elizabeth's fee (\$1,846 per space) is the land and construction cost per space in surface lots.
  6. Berkeley requires developers of lots under 30,000 square feet to pay fees instead of providing the parking. Calgary requires developers to provide half the required parking and to pay fees for the other half. Orlando requires developers to pay fees instead of providing the first required parking space per 1,000 square feet, and allows them to choose whether to provide parking or pay fees for the rest. Waltham Forest requires developers to provide the first 0.2 required parking spaces per 1,000 square feet and to pay fees for the rest. Carmel and Lake Forest require developers to pay fees in lieu of all the required parking.
  7. Office buildings were chosen for Table 2 because they are the most uniformly defined land use among cities. All of the cities in Tables 2 and 3 require parking spaces in proportion to gross floor area. Gross floor area is the building's total floor area, including cellars, basements, corridors, lobbies, stairways, elevators, and storage. Gross floor area is measured from the building's outside wall faces. Seventeen of the 46 surveyed cities do not appear in Tables 2 and 3 because either their in-lieu fees or their minimum parking requirements are not comparable with the other cities. Brent, Culver City, Dresden Frankfurt, Hamilton, Johannesburg, Nuremberg, San Rafael, and Toronto do not have fixed fees; instead these cities establish the fee for each specific case, usually taking into account the appraised land value at the site. Montgomery County's fee is based on the property tax. Manhattan Beach (\$25,169 per space) requires parking only for the building area that exceeds a floor-area ratio of 1:1. Lafayette (\$8,500 per space), Munich (\$16,025 per space), Redbridge (\$8,624 per space), and Würzburg (\$12,820 per space) require parking on the basis of net rather than gross floor area. San Francisco (\$17,135 per space) does not require parking spaces in the CBD. Pasadena allows developers to pay an annual fee (\$100 per parking space per year in 1992 and subsequently indexed to the Consumer Price Index) per parking space not provided.
  8. The fees and parking requirements for each city are their values in 1996. Unless otherwise noted, the fees and parking requirements apply only in the downtown area of each city. Fees are converted into US\$ at 1996 rates of exchange: U.S. \$1 = 1.37 Canadian Dollars; 1.56 German Marks; 66.57 Icelandic Kronur; 3.84 South African Rands; and 0.60 British Pounds.
  9. The British term for an in-lieu fee is "commuted payment." All the British cities in the survey are boroughs of outer London. The inner London boroughs no longer use commuted payments because then have replaced their minimum parking requirements with restrictions on the maximum number of parking spaces allowed.
  10. The average impact fee has been converted to dollars of 1996 purchasing power, the year in which all the in-lieu fees were measured.
  11. The impact fees in Table 2 refer to one specific land use (offices). Montgomery County, Maryland, has a unique in-lieu arrangement that is independent of land use. In one community (Bethesda), for example, developers can pay a property tax surcharge of 0.7 percent of a property's assessed value instead of providing the required parking; the revenue is used to construct and maintain public parking facilities. Montgomery County's general property tax rate to fund education, health, libraries, police, social services, and transportation is 2 percent of assessed property value. The special property tax rate for parking is thus more than one third of the general property tax rate for education, health, libraries, police, social services, and transportation.
  12. See NPTS Web site at <http://www.cta.ornl.gov/npts/1995/Doc/EarlyResults.shtml> for the average distance to work in 1995.
  13. See American Automobile Manufacturers Association (1998) for the average fuel efficiency and the average price of gasoline in 1995.
  14. The  $r^2$  for the correlation between minimum Parking requirements and impact fees is 0.60, and the  $r^2$  for the correlation between in-lieu fees and impact fees is 0.12.
  15. New restaurants in Beverly Hills are not eligible for the reduced fee. They must pay the full fee, which ranges from \$15,135 to \$25,225 per space, depending on the restaurant's location. The Parking requirement of one space per 45 square feet of restaurant area and the in-lieu fees are together equivalent to impact fees ranging from \$336 to \$561 per square foot of restaurant area.
  16. As one example of high parking requirements, the North Westwood Village Specific Plan requires 3.5 parking spaces for each dwelling unit that contains more than four habitable rooms, and even kitchens count as habitable rooms (Los Angeles Ordinance 163,202).
  17. "Since the payment of the \$9,000 per space 'in lieu of' fee only allows for a property owner to establish a business, the fee has never been intended to cover the full cost of providing a parking space... Historically, the 'in lieu of' fee has been placed at a level that is roughly equivalent to fifty percent of the cost of providing a parking space" (Memo to Lake Forest Plan Commission, February 1, 1993, page 2).
  18. In-lieu fees may underestimate the cost of complying with minimum parking requirements for another reason. Developers who pay fees merely receive permission to develop without providing the required parking. Developers who provide the



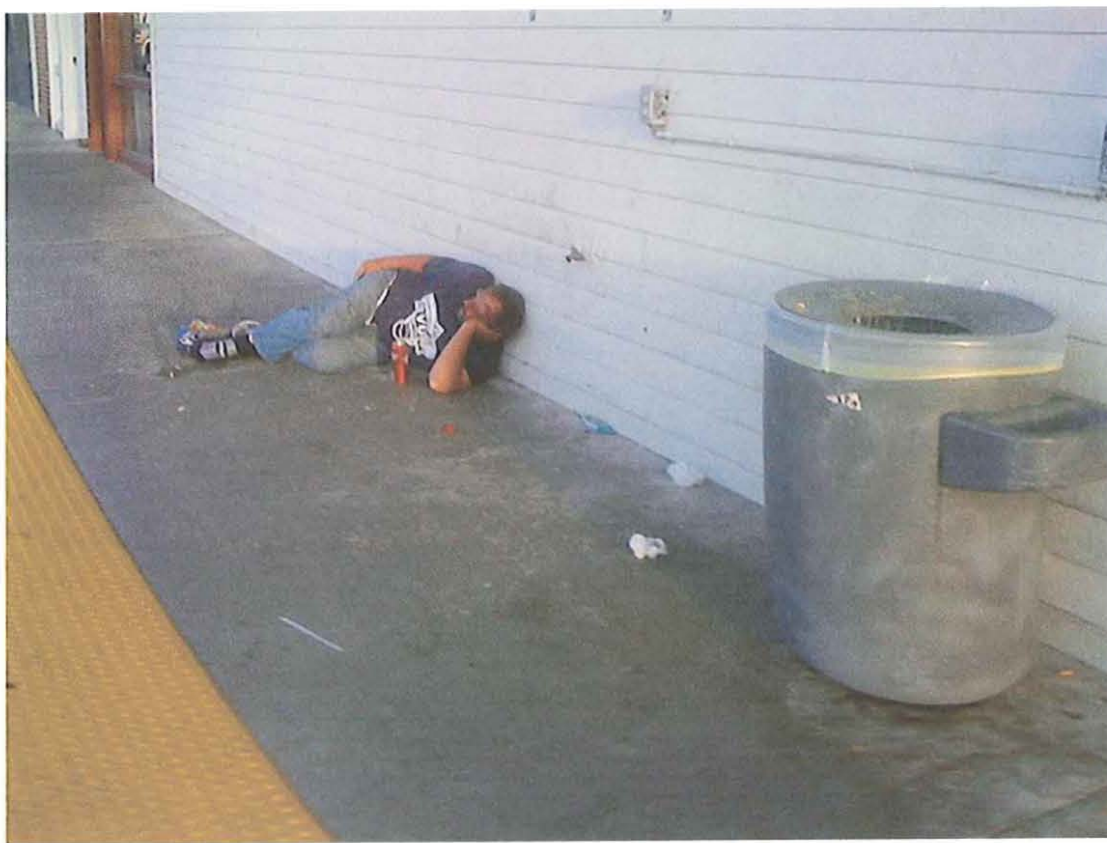
- required parking not only receive permission to develop, but they also own the resulting parking spaces, a valuable asset. Developers who pay the fees instead of providing the required parking would presumably have to pay even more to provide the required parking itself. Suppose the in-lieu fee is \$10,000 per space, and that each on-site parking space adds \$5,000 to a development's value. In this case the developer will pay the fee only if on-site parking costs more than \$15,000 per space. Therefore, payment of the fee suggests that (1) providing the required parking would cost much more, or (2) a parking space does not add much to the development's value.
19. Minimum parking requirements impose no burden if developers would voluntarily provide the required number of parking spaces. Developers would therefore presumably prefer a low parking requirement with a high in-lieu fee to a high parking requirement with a low in-lieu fee, even if the parking impact fee is the same in both cases.
  20. See Planning Advisory Service (1964, 1971, 1991). These data greatly understate the growth in the number of different parking requirements. While the 1964 survey reported every parking requirement found for each of 30 land uses, and the 1971 survey reported every parking requirement found for each of 83 land uses, the 1991 survey reported only a few of the many different parking requirements found for each of 179 land uses.
  21. Palm Springs requires 28.6 spaces per 1,000 square feet for a cabaret, while Vancouver requires one space per 1,000 square feet for all nonresidential uses, including cabarets.
  22. For auditoriums in the CBD, Los Angeles requires a minimum of ten parking spaces per 1,000 square feet, with no maximum. San Francisco allows parking spaces equal to a maximum of 7 percent of building area (0.2 spaces per 1,000 square feet if a parking space occupies 350 square feet), with no minimum.
  23. As an administrative precedent for purchasing transit passes in lieu of providing the required parking, some cities allow property owners to purchase parking permits in public garages in lieu of providing the required on-site parking. For example, Kirkland allows a property owner to pay an annual in-lieu fee of \$1,020 per required parking space not provided, and the owner receives a parking pass to a public garage for each fee paid. This obligation runs with the land, and commits future property owners either to pay the annual fee or to provide the required parking.
  24. This price includes a Guaranteed Ride Home Program. On any day they ride transit to work, employees are entitled to a free taxi ride home in the event of illness, emergency, or unscheduled overtime. The public transit systems in Boulder and Denver, Colorado, and Salt Lake City, Utah, offer similar Eco Pass programs.
  25. There can still be adverse selection among employers. Firms with many employees who ride transit will have an incentive to buy the Eco Passes, and this will tend to increase the transit operators' cost.
  26. Suppose the Eco Pass costs \$80 per employee per year. If there are four employees per 1,000 square feet of office space, the Eco Passes would cost \$320 per year per 1,000 square feet of office space (4 x \$80), or 32 cents per year per square foot of office space (\$320 ÷ 1,000).
  27. If satisfying the parking requirement costs \$55 per square foot of office space, and if Eco Passes reduce the parking requirement by 19 percent, the Eco Passes would reduce the capital cost of required parking by \$10.45 per square foot of office space (\$55 x 0.19).
  28. Shoup and Breinholt (1997) found that employers in the United States provide 85 million free parking spaces for commuters.
  29. Shoup (1997) presents eight case studies in which cashing out employer paid parking reduced parking demand by 11 percent. Because cashing out reduces parking demand, logically it should also reduce parking requirements. California legislation addresses this issue in the following way: "The city or county in which a commercial development will implement a parking cash-out program ... shall grant to that development an appropriate reduction in the parking requirements otherwise in effect for new commercial development" (California Health and Safety Code Section 65089).

## ■ REFERENCES

- Altshuler, A., and J. Gómez-Ibáñez. 1993. *Regulation for Revenue*. Washington, D.C.: Brookings Institution.
- American Automobile Manufacturers Association. 1998. *AAMA Motor Vehicle Facts and Figures*. Detroit, Mich.
- Beverly Hills Planning Commission. 1992. Staff report. April 22. Beverly Hills, Calif.
- Brown, J., D. Hess, and D. Shoup. 1998. Unlimited access. Working Paper, Institute of Transportation Studies, University of California, Los Angeles.
- Chicago Regional Transportation Authority. 1998. *Opportunity Costs of Municipal Parking Requirements*. Prepared by Fish & Associates, K.T. Analytics, and Vlecides-Schroeder Associates, Final Report, April 1998. Chicago, Ill.
- Higgins, T. 1985. Flexible parking requirements for office developments: New support for Public parking and ridesharing. *Transportation* 12:343-359.
- Hu, P., and J. Young. 1992. *Summary of Travel Trends, 1990 Nationwide Personal Transportation Survey*. Washington, D.C.: U.S. Department of Transportation, FHWA-92-027.
- Kuhn, T. 1957. *The Copernican Revolution*. Cambridge, Mass.: Harvard University Press.
- Planning Advisory Service. 1964. *Off-Street Parking Requirements*. Report # 182. Chicago, Ill.: American Planning Association.
- Planning Advisory Service. 1971. *An Approach to determining Parking Demand*. Report # 270. Chicago, Ill.: American Planning Association.
- Planning Advisory Service. 1991. *Off-Street Parking Requirements*. Report # 432. Chicago, Ill.: American Planning Association.
- Public Technology, Inc. 1982. *Flexible Parking Requirements*. Urban Consortium Information Bulletin, DOT-1-82-57. Washington, D.C.: U.S. Department of Transportation.
- Santa Clara Valley Transportation Authority. 1997. *Eco Pass Pilot Program Survey Summary of Findings*. San Jose, Calif.
- Shoup, D. 1995. An opportunity to reduce minimum parking requirements. *Journal of the American Planning Association* 61(1):14-28.
- Shoup, D. 1997. Evaluating the effects of cashing out employer-paid parking: Eight case studies. *Transport Policy* 4(4):201-216.
- Shoup, D., and M.J. Breinholt. 1997. Employer-paid parking: A nationwide survey of employers' parking subsidy policies. In *The Full Social Costs and Benefits of Transportation*, eds. D. Greene, D. Jones, and M. Delucchi, 371-385. Berlin, Germany: Springer-Verlag.
- Topp, H. 1993. Parking policies to reduce car traffic in German cities. *Transport Reviews* 13(1):83-95.



- University of Washington Transportation Office. 1997. *Stadium Expansion Parking Plan and Transportation Management Program: Draft 1997 Data Collection Summary*. December 19. Seattle, Wash.
- Weant, R., and H. Levinson. 1990. *Parking*. Westport, Conn.: Eno Foundation.
- Willson, R. 1995. Suburban parking requirements: A tacit policy for automobile use and sprawl. *Journal of the American Planning Association* 61(1):29-42.





**Placer County**  
California



Materials Recieved

Item No. 4d

Zoning Code Implementation

Review Authority for Alcohol Sales

In-Lieu parking Fee

Search

Advance

Departments

[Residents](#) | [Business](#) | [Visitors](#) | [Online Services](#) | [Board of Supervisors](#) | [Emergency](#) | [County](#)



Public Works

[Home](#) > [Departments](#) > [Public Works](#) > [Tahoe Parking Improvement Study](#) > [Bibliography](#)

Saturday, Mar 12, 2011

## Bibliography

City of Aspen, Colorado. "Westside Cities Livable Communities: Parking Subtask 3.A," page 45-46, 1995.

City of Bend, Oregon. "Parking in Lieu of Fee," Bend City Council, December 1, 2004.

City of Brentwood, California. "Minutes, City of Brentwood, Redevelopment Agency Meeting," Brentwood City Council, 708 Third Street, Brentwood, California, 94513, May 13, 2003.

City of Brentwood, California. "Public Hearing-Adoption of a temporary in-lieu parking fee for new and expanding projects within the downtown area," Brentwood City Council, 708 Third Street, Brentwood, California, 94513, October 14, 2003.

City of Corvallis, Oregon. "Fee-in-Lieu Parking Program for Parking-Related Improvements in the Central Business District and the Riverfront District," CP 02-7.15, Corvallis City Council, adopted December 16, 2002.

City of Davis, California. "Parking In-Lieu Fee," section 40.25.060, Municipal Code, Chapter 40 Zoning, City of Davis, 23 Russell Blvd., Davis, California, 2005.

City of Fairfield, California, Zoning Ordinance. "In-lieu fees," Overlay Zoning Districts, Section 25.28 ©, adopted April 20, 1999, amendments through May 31, 2005.

City of Laguna Beach, California. "Park-In-Lieu Fees," Description of Key Revenue Sources, no date.

City of Manhattan Beach, California. "Parking in-lieu payments," section 10.64.060, Chapter 10.64, Municipal Code, City of Manhattan Beach City Hall, 1400 Highland Avenue, Manhattan Beach, California, 90266, 2005.

City of Olympia, Washington. "Westside Cities Livable Communities: Parking Subtask 3.A," page 46-47, 1995.

City of Sacramento, California. "Central City Parking Master Plan - Parking Supply," City of Sacramento, 915 I Street, Sacramento, California 95811, September 27, 2005.

City of Sacramento, California. "Central City Parking Master Plan - Parking Supply," City of Sacramento, 915 I Street, Sacramento, California 95811, September 27, 2005.

City of Salinas, California. "Parking in-lieu Payments," Chapter 37 Zoning, Article IV, Regulations Applying to All Districts, Salinas City Council, no date.

City of Vancouver, Washington. "Parking Requirements for unlisted uses," Municipal Code, Section 20.945.070, amended May 2, 2005.

Embarcadero Publishing Company. "Parking in-lieu fee for developers doubled," Mountain View City Council, California, September 29, 2000.

Fein, Geoff S. "Council Oks Parking Fee for Downtown Merchants," Palo Alto Daily News, March 20, 2001.

Jia, Wenyu and Martin Wachs. *Parking and Affordable Housing, Access*, Vol. 13, No. 3:22-25, 1997.

Kodama, Michael R. and Dr. Richard Wilson. "Technical Report Westside Cities Subregion Livable Communities (Parking Subtask 3.A)," Westside Cities Subregion and Meyer Mohaddes Associates, April 20, 2000.

Osborn, Lynn. "Parking Management Programs as Effective TDM Land Use Strategies," Contra Costa Commute Alternative Network, Walnut Creek, California, September 2003.

RS Means. *Building Construction Cost Data 2000*, 58th Ed., Robert S. Means Company, 1999.

Shoup, Donald C. "In Lieu of Required Parking," *Journal of Planning Education and Research* 18:307-320, 1999.

Shoup, Donald C. "Instead of Free Parking," *Access*, Vol. 15, No. 2:6-9, <http://www.uctc.net/access/access15.pdf>, 1999.

Shoup, Donald C. "The Trouble with Minimum Parking Requirements," *Transportation Research Record*, Part A, Vol. 33:549-574, 1999.

Smith, Thomas P. *Flexible Parking Requirements*, American Planning Association, Planning Advisory Service Report No. 377, August 1983.

Snow, Marv. "Parking Votes to be Counted Monday," *Palo Alto Weekly*, March 16, 2001.

Town of Davie, Florida. "Payment In-Lieu-of Parking for Residential and Non-Residential Uses," Davie Town Hall, 6591 Orange Drive, Davie, Florida, 33314, 2003.

Town of Jackson, Wyoming. "A Resolution Adopting Parking Fee-In-Lieu for Downtown Special Parking District in the Town of Jackson," Jackson Town Council, adopted June 2005.

Victoria Transport Policy Institute. "Parking Management," *Strategies for More Efficient Use of Parking Resources*, Victoria Transport Policy Institute, 1250 Rudlin Street, Victoria, B.C., V8V 3R7, Canada, May 9, 2005.

Weant, Robert A. and Herbert S. Levinson. *Parking*, Eno Foundation for Transportation, P. O. Box 2055, Westport, Connecticut, 06880, 1990.

Tahoe Regional Planning Agency. "Lake Tahoe Region of Placer County, North Tahoe Community Plans," Appendix A - Parking Demand Table, Appendix B - Standards and Guidelines for Signage, Parking and Design, Appendix C - Allocation Guidelines, adopted April 30, 1996.

**Home** | **Residents** | **Business** | **Visitors** | **Online Services** | **Board of Supervisors** |  
**Emergency** | **County Government**

© 2010 County of Placer, California | [Legal Notices](#) | [Citizens Guide](#) | [Contact Us](#) | [Sign up for County e-News](#)

# Alcohol Review Authority

Land Use	Review Authority Old Code	Review Authority Current Code
Off Sale (packaged)	Planning Commission	Zoning Administrator
Restaurant – with alcohol sales, close by 11PM	Planning Commission	Zoning Administrator
Restaurant – with alcohol sales, close after 11PM	Planning Commission	Planning Commission
Bars and Nightclubs	Planning Commission	Planning Commission
Alcohol Sales, Accessory	Planning Commission	Permitted in most commercial zoning districts



**Bar, Lounge, and Nightclub.** An establishment that sells or serves alcoholic beverages for consumption on the premises and is holding or applying for a public premise license from the California State Department of Alcoholic Beverage Control (ABC) (i.e., ABC License Type 42 [On Sale Beer & Wine-Public Premises], ABC License Type 48 [On Sale General-Public Premises], and ABC License Type 61 [On Sale Beer-Public Premises]). Persons under 21 years of age are not allowed to enter and remain on the premises. The establishment shall include any immediately adjacent area that is owned, leased, rented, or controlled by the licensee.



**Food Service, No Late Hours.** An establishment that sells food and beverages, including alcoholic beverages, prepared for primarily on-site consumption, and that has all of the following characteristics:

1. Establishment DOES NOT have late hour operations (see “Late Hour Operations”);
2. Customers order food and beverages from individual menus;
3. Food and beverages are served to the customer at a fixed location (i.e., booth, counter, or table); and
4. Customers pay for food and beverages after service and/or consumption.



**Food Service, Late Hours.** An establishment that sells food and beverages, including alcoholic beverages, prepared for primarily on-site consumption, and that has all of the following characteristics:

1. Establishment DOES have late hour operations (see “Late Hour Operations”);
2. Customers order food and beverages from individual menus;
3. Food and beverages are served to the customer at a fixed location (i.e., booth, counter, or table); and
4. Customers pay for food and beverages after service and/or consumption.

**Late Hour Operations.** Facilities that provide service after 11:00 p.m.

- **Alcohol Sales, Off-Sale (Land Use).** An establishment that sells, serves, or gives away alcoholic beverages for consumption off the premises and that is applying for or has obtained an ABC License Type 20 (off-sale beer & wine-package store) or License Type 21 (off-sale general-package store). The establishment shall include any immediately adjacent area that is owned, leased, rented, or controlled by the licensee. Does not include an establishment that sells alcoholic beverages as an accessory line of merchandise. See “Alcohol Sales, Off-Sale, Accessory Only.”